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ABSTRACT

Licensing as a means of business regulation increases information by establishing minimum standards for entrants, provides an easy remedy in cases of fraud, and assures competence when social costs are greater than private costs. At present, all states license certain occupations and professions. A comparison of municipal licensing practices in different states indicates that these practices are not related to historic or socioeconomic characteristics of the states. Licensing practices in Illinois would be improved by clearer wording of state statutes and consistent court decisions. (BH)

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MUNICIPAL LICENSING OF BUSINESS AND OCCUPATIONS: A SURVEY OF PRACTICES IN ILLINOIS AND OTHER STATES

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INTRODUCTION

Licensing is a traditional method of business regulation in Anglo-American law. Business licensing laws can be traced back at least to fifteenth and sixteenth century England when statutes were enacted providing for the licensing of alehouses. Regulation imposed even earlier by the medieval trade and occupational guilds was the forerunner of modern regulation of professions. Licensing was employed in colonial America by both colonial and local governments, and it was recognized early in the history of American government that the states had power under the United States Constitution to regulate and license local matters. Accordingly, the states enforce their licensing regulations through their police power.

As licensing was expanded, the question arose as to which occupations could be licensed within the accepted realm of public protection. Most courts agreed that there were outside limits to the types of occupations that could be licensed, but these limits were not often enforced.[1] And, despite the fact that many judges continue to pay at least lip service to the pronouncement that a "state may not under the guise of protecting the public arbitrarily interfere with or prohibit private business or lawful occupation,"[2] the judicial inclination is to uphold most of these licensing statutes.

Licensing is felt to be an effective means of regulation. Three rationales based on public welfare arguments are generally advanced as to why occupations should be licensed. First, it is argued, licensing increases information by establishing minimum standards for entrants. All practitioners must meet certain minimum qualifications, for no unlicensed practitioners are permitted. The consumer therefore knows that practitioners of the licensed occupation possess a given degree of competence. Often, however, this particular argument is not applicable. For example, "registration regulation" is a prevalent license practice and, in some forms, the only qualification to be met is the fee payment. A majority of so-called regulatory licenses issued by the City of Chicago are of this type.

Second, compulsory licensing establishes a cheaper remedy than going to

[1] See William Keck, "Occupational Licensing: An Argument for Asserting State Control," *Notre Dame Law Review* (Vol. 44, October 1968), pp. 104-107.

[2] *Burns Baking Co. v. Bryan,* 264 U.S. 504.

the courts in cases of fraud. It may also aid the police in tracking down fraudulent practitioners.

The third rationale holds that licensing may sometimes be necessary when social costs are greater than private costs; that is, when others besides the parties to the transaction bear part of the costs for poor quality or fraudulent services. The medical profession is often cited as a case where social costs are greater than private costs. For example, an "incompetent" physician may diagnose a disease incorrectly and thus start an epidemic. The same argument can be applied to numerous occupations, including builders of nursing homes, theaters, and other public constructions. Not only must there be building codes (specifications and/or performance regulations) but also licensing of the actual builders on matters of occupational competence.

Although state licensing is historically for regulation,[3] it has been adapted by local government as an effective device for enforcing local laws generally, and as a means of acquiring revenue.

Despite the fact that the powers to regulate and tax by license are distinct, in practice license taxes may be a simple extension of license fees (the administrative costs of regulation). The development of a system of city licensing for revenue usually follows an evolutionary pattern. Initially, such taxes are assessed on a flat rate — the most common basis for license fee assessment. Later, classification, as a more equitable form of assessment, is introduced. The gross receipts tax is indicative of the greatest degree to which a number of cities in the United States have modified license taxes. The gross receipts formula is not common among local governments which have no expressed authority to license for revenue (yet, there are examples of license assessments by means of gross receipts in Illinois).

The withholding, suspension, or revoking of business licenses (without which it is illegal to conduct business) provides municipal authorities with an effective enforcement tool. Such economic sanction has been applied by some cities against infringement of anti-discrimination laws, specifically, in housing.

Although the Illinois courts have strictly construed legislative intent and ruled that the power to regulate may not deal with civil rights on the basis that such matters were not contemplated by the legislature at the time the power to regulate was conferred in 1871, federal civil rights legislation has found expression indirectly through these licensing procedures. Peoria and Chicago have fair housing boards which investigate and conciliate complaints. They hold hearings and may recommend to the mayor or city

[3] It is argued that state regulatory boards do not serve the public interest. See "Occupational Licensing: Protection for Whom?" *Manpower*, U.S. Department of Labor, no. 6, July 1969, and Illinois Legislative Council Exploratory Research Memorandum, File no. 7-301, "Vocational Licensing and the Public Interest."

manager that he suspend or revoke the city license of a real estate broker.[4] In addition, the mayor or city manager may file a complaint with the Department of Education and Registration to seek revocation of licenses issued by the state to these brokers.

Licensing is a common and multidimensional function of local government and an accepted feature of municipal home rule. Limitations upon the licensing power are nevertheless common although such limitations are a fruitless constitutional and/or legislative exercise based upon the assumption that the purposes of licensing can indeed be as distinct in practice as they are in the legal language.

This survey examines —

1. local licensing law in Illinois;
2. municipal licensing practices in Illinois;[5] and
3. licensing law and practice of cities in other states.

I. MUNICIPAL LICENSING IN ILLINOIS: LEGAL POSITION

Because local governments traditionally derive their authority from the state, and because home rule is not a legal option in Illinois,[6] it is logical to assume that municipal licensing powers must always find expression in the statutes and that the courts must strictly construe these statutory grants of authority.

Corporate authorities in Illinois have broad powers to license businesses and occupations. This situation is principally the result of an extensive enumeration of subjects, and the vague, or otherwise poor, wording of these sections of the Cities and Villages Act which has induced significant conflict in the case law. A common problem is the potential range of licensing authority offered by the statutes. Express statutory authority may include the powers to license, to regulate, to tax, to prohibit, to prevent and to locate — singly or in any possible combination. These authorizations are not consistently applied to subjects by any reasonable classification, and it is common for unrelated

[4] Unfair practices are discrimination in prices, terms and conditions in the rental, sale, lease or occupancy of any residential property, publication or solicitation to induce panic selling, refusal to rent, sell and lease on racial or religious grounds and participation in discimination in lending money, guaranteeing loans, etc.

[5] For the most part, licensing by the City of Chicago will not be discussed in this survey of municipal practices. This information is available in Malcolm B. Parsons, *The Use of Licensing Power by the City of Chicago* (Urbana: University of Illinois Press, 1952); Jack M. Siegel, *Chicago's Power to License and Regulate* (Center for Research in Urban Government, Loyola University, 1965); and Keck, "Occupational Licensing," *Supra* note 1.

[6] At this time, constitutional home rule for municipalities over 25,000 population is pending approval by the voters on December 15, 1970. However, the grant of power to license prohibits licensing for revenue except as authorized by the General Assembly.

subjects to be listed together. (See Appendix A for a complete breakdown of the relevant statutes.)

Consequently, there has been extensive litigation before the Illinois courts on all manner and forms of municipal licensing authority, and it is in the decisions of the courts that any realistic understanding of the present position of the law in this area can be established.

Powers Excluded

In the absence of self government or home rule in Illinois, the "Dillon Rule" persists.[7] A municipal corporation, explained Justice Dillon, possesses powers expressly granted by the state, powers necessarily implied, or powers essential to the accomplishment of declared objectives. This is specifically stated in the statutes and is incident to numerous court rulings.

To authorize the exercise of any power by a city a statute must be shown expressly granting the power or making a grant in such terms as necessarily imply its existence. The absence of such grant excludes the power.[8]

This, of course, also applies to counties, townships, and other local units of government.[9]

The exclusion of power is explained by the court in the following manner:

The express enumeration of certain subjects and occupations in the various subsections over which the city is given powers or authority is by a well known canon of construction, the exclusion of all other subjects and occupations.[10]

Implied Licensing

The above reasoning has been advanced in *Kinsley v. City of Chicago*[11] in which it was argued that inclusion of the words "to regulate" and omission of the words "to license" in the grant of power was tantamount to an express denial of the power to license. However, the court rejected this argument as too technical to be applied.

The courts have consistently held that the power to regulate includes the power to license as in, for example, *City of Chicago v. R. and X. Restaurant, Inc.*[12] and *Father Basil's Lodge v. City of Chicago.*

If the regulation of certain conditions affecting the public safety has been delegated to a city and the efficient regulation of such conditions requires the conduct of a business peculiarly affected by them to be controlled by the limitations of a

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[7] John F. Dillon, *Commentaries on the Law of Municipal Corporations* (5th ed., Boston: Little, Brown Co., 1911), Vol. I, sec. 237.

[8] *Chicago Coach Co. v. City of Chicago,* 337 Ill. 200.

[9] *People ex rel Johnson v. Southern Ry Co.,* 267 Ill. 389, and *Goodwine v. County of Vermilion,* 271 Ill. 126.

[10] *Arms v. City of Chicago,* 314 Ill. 317. See also, *City of Chicago v. Dollarhide,* 255 Ill. App. 350.

[11] 124 Ill. 359. Similarly held in *Sager v. City of Silvis,* 402 Ill. 262; see p. 18.

[12] 369 Ill. 65.

licensing ordinance, the power of the city to adopt such an ordinance will be necessarily implied.[13]

The crucial factor is that licensing must be a reasonable means of regulation and must not be used for other objectives (such as tax purposes). If a choice of means to regulate is available, and if licensing is an effective choice, such practice will be upheld by the courts as in *Chicago Packing and Provision Co. v. City of Chicago.*[14] Each municipality is left to decide its own means of regulation; hence, the regulation of similar enterprises may vary from one area to another.

Justice Dillon also stated, as a logical conclusion to his previous statement, that where there is any doubt as to the existence of municipal authority, the court will rule against the municipality. This principle has been adopted by the Illinois Supreme Court, as shown by Louis Ancel and Jack Siegel.[15] A typical example, cited by them, is the statement in *Barnard and Miller v. City of Chicago:*[16]

> Statutes granting powers to municipal corporations are strictly construed and any fair and reasonable doubt as to the existence of the powers must be resolved against the municipality.

Combined Powers

Grants of power to corporate authorities may come from separate sources: "the authority of a municipality to adopt an ordinance may be derived from a single grant or by a combination of enumerated powers."[17]

In some cases, the existence of several sources of statutory power may enlarge the scope of municipal licensing authority, and in others, diminish that authority. The leading case for the former is *Father Basil's Lodge v. City of Chicago.*[18] In that case — which Ancel regards as a most important precedent for increasing municipal licensing power — the court sustained a Chicago ordinance regulating nursing homes although it was based on no explicit grant of authority. In so doing, the court relied on several sections of the Cities and Villages Act, including sections 11-30-4 and 11-8-2 dealing with fire hazards, and section 11-20-5, the general maintenance of health and safety. The court ruled that

> under these delegations of police power from the State, a city may regulate any occupation or business, the unrestricted pursuit of which might either injuriously affect the health of the citizens or subject them to danger from fire.

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[13] 393 Ill. 246.
[14] 374 Ill. 384.
[15] "Licensing as a Regulatory Device," *University of Illinois Law Forum* (Spring, no. 1, 1957), p. 61.
[16] 316 Ill. 519.
[17] 369 Ill. 65.
[18] 393 Ill. 246.

On the other hand, several grants of authority in the Cities and Villages Act must be taken in combination with others for the purpose of restricting municipal licensing powers. For example, the grant that "the corporate authorities of each municipality may pass and enforce all necessary police ordinances"[19] cannot stand alone. The court has held in *City of Chicago v. M. and M. Hotel Co.* [20] that

> Clause 66 (11-1-1) is intended to give cities and villages the power to pass and enforce all necessary police ordinances which may be in reference to the subject and occupations, the regulation and control of which are by other specific clauses expressly delegated to such municipalities. That clause is not a general delegation of all police power of the State, which, if given to them would authorize cities and villages to pass and enforce all police ordinances upon any and all subjects, without regard to any other specific delegation of power.

In another vein, a combination of power will be invalidated if it has the ultimate effect of enumerating a specific list of occupations for regulation rather than developing an inconclusive statement capable of sustaining implied power as in the Father Basil's Lodge Case.[21] In *Ives, et al. v. City of Chicago,* municipal officials attempted to sustain an authority to license "building contractors" implied from a combination of authority to license various types of contractors in numerous sub-sections of the statutes.[22] The court ruled that

> it would seem that the existence of the enumerated statutory powers has just the opposite effect and precludes the imposition of regulation and licensing upon contractors in fields other than those to which cities have been expressly given regulatory power. . . . If the city has the power by implication to fill the gaps between contractors enumerated by statutes for regulation and all other contractors, there was little purpose in the legislature's selectivity in choosing certain contractors for regulation.[23]

Ejusdem Generis[24]

The principle of *ejusdem generis* is implicit in any strict construction of the law. The conflict in court rulings on municipal licensing powers in this sphere is perhaps most apparent. For example, in section 11-42-3 of Chapter 24 of the Cities and Villages Act, the corporate authorities of each municipality may

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[19] *Illinois Revised Statutes,* 1969, Ch. 24, sec. 11-1-1.

[20] 248 Ill. 264.

[21] 393 Ill. 246.

[22] *Illinois Revised Statutes,* 1969, Ch. 24, sec. 11-32-1, air conditioning and refrigeration contractors; 11-33-1, electrical contractors; 11-34-1, persons in charge of steam boilers; 11-35-1, plumbers; and 11-36-1, mason contractors.

[23] 30 Ill. 2d. 582.

[24] Applicable in Chapter 24 of the *Illinois Revised Statutes* to sections 11-42-4, 11-42-6, 11-80-10, 11-8-5, 11-42-10, 11-53-1, and 11-42-2. See Appendix A.

license, tax, locate and regulate all places of business of dealers in junk, . . . rags, *and any second-hand article whatsoever.* The corporate authorities also may forbid any person from purchasing or receiving from minors without the written consent of their parents or guardians, any article whatsoever (my emphasis).

The court has placed a broad restraint upon the meaning of the phrase, "any second-hand article whatsoever," and has reinforced the practice of *ejusdem generis* whereby police power is exercised only as against those subjects which are elsewhere mentioned in the section. The reasoning of the court was explained in *City of Chicago v. Moore*[25] in which a second-hand store license ordinance was declared invalid as applied to a store selling second-hand books. The court held that power to license extended only to those second-hand stores which carried on a business similar to junk shops. Identical reasoning in the case of *Bullman v. City of Chicago*[26] removed used cars from municipal regulation under this section,[27] and in the case of *City of Chicago v. Stone*[28] on the matter of used musical instruments, and in *City of Kewanee v. Riverside Industrial Materials Co.*[29] on industrial scrap.

The court, in these cases, was enunciating what it felt to be legislative intent in that section 11-42-3 is a revision of section 95 of Article 5 of the Cities and Villages Act which read "to tax, license and regulate second-hand and junk stores and yards, and to forbid their purchasing or receiving from minors without the written consent of their parents or guardians, any article whatsoever. . . ." The rewording of the revised, current section would seem to be an extension of municipal authority in this area, but the court has not viewed the legislative intent in this way.[30]

On the other hand, section 11-42-5 of the Cities and Villages Act reads, "The corporate authorities of each municipality may license, tax, regulate or prohibit hawkers, peddlers, pawnbrokers, itinerant merchants, transient vendors of merchandise, theatricals and other exhibitions, shows and amusements. . . ." The court ruled in *Stiska v. City of Chicago*[31] that "amusements" as it appears in this section is not within the class of theatricals and other exhibitions. The principle of *ejusdem generis* does not, therefore, apply.

Actually, municipal authority to control amusements is virtually unlimited[32] although municipalities can prohibit only such amusements as come within

[25] 351 Ill. 510.
[26] 367 Ill. 217.
[27] Although recent law distinguishes dismantled or wrecked motor vehicle dealers as a licensable subject.
[28] 328 Ill. App. 345.
[29] 21 Ill. App. 2d. 416.
[30] See p. 6.
[31] 405 Ill. 374.
[32] *Illinois Revised Statutes,* 1969, Ch. 24, sec. 11-42-5 and 11-80-9.

the legitimate operation of the police power. The cities cannot be authorized to do what the General Assembly cannot itself do.[33] For example, in *City of Chicago v. Drake Hotel Co.*,[34] a city ordinance requiring a hotel owner to obtain a permit in order to allow his patrons to dance during his regular open hours was struck down by the courts as unconstitutional. Had he charged a fee for dancing, the matter would have been different. But as it stood, such prohibition was beyond police power.

The power to prohibit as it appears in combination with other grants of authority has been consistently restricted by the courts and extends only to those activities which are harmful or a potential nuisance. In *City of Carrollton v. Bazette*,[35] it was argued that section 11-42-5 itself[36] was unconstitutional, and that the legislature has no power to suppress itinerant merchants or to prohibit them from following their vocation. The court found that an itinerant merchant fee of $10 per day is burdensome and prohibitive and consequently invalid.

Hence, a license fee cannot, under any circumstances, be used as a prohibitive measure. The terms for prohibition must be stated in the ordinance, and prohibition may not be effected by confiscatory license fees. However, the fact that a tax may put some individual out of business is not necessarily a valid argument against it if the tax is reasonable in relation to benefits conferred. The court ruled in *Village of Mansfield v. Carpentier* that

> the formula imposing a particular tax is no measure of its constitutionality so long as it is a reasonable exercise of legislative judgment. Neither is the fact that a tax put some individual out of business considered a valid argument against the tax if the tax is otherwise reasonable in relation to the cost of the highways or the abstract value of the privilege of using them.[37]

Also, the effects are measured not upon the individual but upon those of a class engaged in the same occupation or business. The test is whether the fee bears so heavily on an entire class as to be excessive.

Where an ordinance is intended for regulation and not taxation or prohibition (although the statute may permit all three), the municipal authority does not have unlimited discretion in fixing the amounts of license fees, as the court ruled in *City of Bloomington v. Ramey.*

> The ordinance before us is a licensing and not a taxing ordinance. Where there is no power to suppress or prohibit, the municipality does not have unlimited discretion in fixing the amount of licensing fees. . . . So far as the matter comes within the discretion of municipal authorities, it is for them, and not for the Courts,

[33] *City of Chicago v. Ferris Wheel Co.*, 60 Ill. App. 384.
[34] 274 Ill. 408.
[35] 159 Ill. 284.
[36] *Illinois Revised Statutes*, 1969, Ch. 24, sec. 11-42-5.
[37] 6 Ill. 2d. 455.

to determine what the fee shall be. It is only when an ordinance is clearly unreasonable and prohibitive in character and there exists no power to prohibit, that Courts may interfere and pronounce it invalid.[38]

It follows that where the power to prohibit is not expressly given, that power will not be necessarily implied from the powers to regulate, license, or tax.[39]

Territorial Jurisdiction

Municipalities cannot regulate activities outside their corporate limits, as is the case with all municipal powers, unless otherwise stated. The legislature may alter these limits under varying circumstances. In *Chicago Packing and Provision Co. v. City of Chicago,*[40] the court held that "there can be no doubt that the General Assembly may, for police purposes, prescribe the limits of municipal bodies. It may enlarge or contract them at pleasure. . . ."

Statutes which grant extraterritorial powers in connection with licensing are Chapter 24, section 7-4-1, enforcement of health ordinances within one-half mile of the corporate limits; section 11-42-7, regulation of packing houses, factories for making of tallow candles, fertilizers and soaps, and tanneries within the distance of one mile beyond the corporate limits; section 11-49-1 prohibiting the establishment of cemeteries within one mile of the municipal limits, and section 11-42-9, prohibiting "any offensive or unwholesome business" within the distance of one mile beyond the municipal limits.[41]

Whether an article might or might not be a nuisance is left to the judgment and discretion of the municipal authorities and is conclusive in settling the issue.[42] Often sections 7-4-1 and 11-42-9 are treated together as jurisdiction for prosecution, but not necessarily enlarging the geographic scope of the former.[43]

There is also the issue of overlapping jurisdiction in extraterritorial grants of authority. In *Chicago Packing etc. v. City of Chicago,*[44] it was ruled that a packing plant located within one municipality and less than a mile from the corporate limits of a neighboring city was subject to regulation by both municipalities.

The imposition of jurisdictional limits on municipal powers is perhaps best illustrated in the attempts by cities to license dairy farms or milk factories

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[38] 393 Ill. 467.
[39] *Nahser v. City of Chicago,* 271 Ill. 288.
[40] 374 Ill. 384.
[41] Section 11-5-1, the suppression of bawdy or disorderly houses and also houses of ill-fame or assignation within a three mile radius of the corporate limits would appear to be the widest range of extraterritorial powers expressly delegated to municipalities.
[42] *City of Streator v. Davenport Packing Co.,* 347 Ill. App. 492.
[43] *City of Chicago v. National Brick Co.,* 331 Ill. App. 614.
[44] *Supra* note 14.

located outside their jurisdictional boundaries but supplying milk within the city. The statutory authority to regulate milk sales derives from the power to enforce health ordinances within one-half mile of the corporate limits and from the provision authorizing the regulation of the sale of beverages and food within the city. But, the court ruled in *Higgins v. City of Galesburg*[45] that these powers do not authorize ordinances requiring licenses for milk produced outside the half-mile limit but distributed in the city.

In *Dean Milk v. City of Aurora*[46] the court explained that although a city may regulate the sale and distribution of milk within its territorial limits, regulation of milk plants beyond such limits cannot be accomplished by permitting local sales or distribution only on the condition that such regulations be complied with. It was argued that, in the Aurora case, unlike the Higgins case, the city ordinance attempted to license not plants which were outside the city's jurisdiction but the distribution of the milk within its legal limits. The court ruled that

> it is a distinction without a difference. The effect is the same whether nonresident milk plants are required to be licensed as such or whether the granting of a license to sell or distribute milk within the city is conditioned upon compliance with requirements prescribed for milk plants supplying such milk.[47]

Similar reasoning is found in *Kiel v. City of Chicago*[48] on the matter of the products of a brewery or distillery: "the sale of such products does not bring a distillery or brewery within the limits of the city, or place it in such a position that a license can be required before a sale." Yet, a city may require a license for use of its streets by taxicabs owned and operated by a firm in another city.[49]

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[45] 401 Ill. 87.

[46] 404 Ill. 331.

[47] Although the court rests its decision on the extraterritorial effect of the ordinance, it appears from the opinion that other factors present in the case necessitated the determination that the ordinance was invalid. There was no reasonable relation between the conditions of the ordinance and the protection of public health, for among others, no contention was made nor evidence introduced that the plaintiff's milk was impure.

The necessity of detailed regulation and inspection of the conditions under which milk is produced is well recognized today and was clearly expressed by the court in *Koy v. City of Chicago,* 263 Ill. 122. State regulations in regard to milk specifications authorize concurrent jurisdiction under ordinances containing "reasonable provisions directed toward protecting the public health. The Aurora ordinance contained provisions not related to the police power which the Court could not affirm." See Case Comments, D. J. McGarry, "Extraterritorial Effect of Municipal Milk Ordinances," *University of Illinois Law Forum* (Spring, no. 1, 1950), pp. 142-46.

[48] 176 Ill. 137.

[49] *City of Chicago v. Kay,* 282 Ill. App. 604; see also Charles M. Kneier, "The Licensing Power of Local Governments in Illinois," *University of Illinois Law Forum* (Spring, no. 1, 1957), p. 11.

Licensing and Interstate Commerce

Municipal ordinances cannot violate the state or federal constitutions. It is unconstitutional, for example, to contravene interstate commerce. A common licensure issue over, for example, intracity and interstate traffic of a cartage firm, may result. In *City of Chicago v. Willett Co.,* [50] the court held that Chicago was violating interstate commerce when it attempted to tax the intracity business of a firm which also trucked throughout the Midwest and did not keep separate records for its Chicago business.

This decision was reversed by the U.S. Supreme Court which ruled that

> a license tax levied by the City of Chicago on the business of operating trucks within the city, measured by the carrying capacity of each, is held, as applied to a domestic corporation having a place of business in the city, whose trucks carried commingled cargoes to local and interstate destinations, not to impose an unconstitutional burden on interstate commerce.[51]

To this so-called home-port theory, Justice Douglas dissented on the grounds that the tax was assessed on the number of trucks and that traffic in interstate commerce requires a greater number of vehicles, thus placing a tax burden upon interstate commerce.

Nevertheless, the health inspection of vehicles seldom contravenes the interstate commerce clause: "inspection and regulation of vehicles in the interest of public health is not assailable as a burden on interstate commerce," ruled the U.S. Supreme Court in numerous decisions.

Classification

The constitutionality of municipal ordinances involving a classification for licensing purposes has often been challenged on the basis of the "equal protection of the laws" clause of the Fourteenth Amendment of the U.S. Constitution. The most obvious infringements of "equal protection" are those laws which tend to create monopolies. Monopolies are an inherent feature of selective or arbitrary licensing practices. Struck down in *Tugman v. City of Chicago*[52] was an ordinance which specified that from a designated date thereafter, no distillery, slaughter house, or soap factory would be permitted to operate within a predetermined area of the city. But such businesses already in operation there would be allowed to continue.

In *City of Chicago v. Rumpff,*[53] the court held that

> all by-laws should be general in their operation and should bear equally upon all the inhabitants of the municipality. When privileges are granted by an ordinance, they should be open to . . . all upon the same terms and conditions.

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[50] 406 Ill. 286.
[51] 344 U.S. 574.
[52] 78 Ill. 405.
[53] 45 Ill. 90.

Such issues are less common today than are more subtle questions of distinguishing by fees persons engaged in identical enterprises. Disputes usually arise over the manner by which the fee to be paid for a license is set down. When the fee to be paid for the privilege of conducting a particular business is not the same for all such businesses (i.e., a flat fee), but is a graduated fee based on a particular set of factors, the classification must be justifiable.[54]

It is not a question of classification that a municipality may select some subjects for regulation and not others despite the power to do so. For example, in *Kitt v. City of Chicago,*[55] the court held an ordinance prohibiting pin ball machines was valid although the city did not choose to prohibit other amusements in the statute.

The question of discrimination is one which is concerned with the regulation of a similar class of business and not among businesses which may have been listed together in the enabling legislation. "To be valid, ordinances need not attempt to cure all evils sought to be prevented, but it is enough if the ordinance operates alike on all those included within its terms. . . . The plaintiff cannot question non-application to other businesses in which the plaintiff is not engaged."[56]

With the exception of the statute authorizing the licensing and regulation of retail dealers in alcoholic liquors, the statutes make no specific reference to the matter of classification. Once it is established that a municipality has the power to regulate a specific subject matter, this power is qualified only to the extent that the ordinances be "reasonable."

> An ordinance passed in pursuance of such power (conferred by statute) cannot be held invalid by the courts as being unreasonable; but when the details of such legislation are not prescribed, an ordinance passed in pursuance of such power must be a reasonable exercise thereof or it will be pronounced invalid.[57]

It remains for the courts to produce a standard of reasonableness. It has been decided that the details of an ordinance are "not required to be specific, logical or consistent" and that "a classification is proper if it is secured for the purposes for which it is intended and is not arbitrary."[58] It is not the concern of the court whether the details of an ordinance are wise, but rather if they bear a reasonable relationship to the police power (i.e., protection of public health, safety, and morals). Such was the reasoning in *Village of Western Springs v. Bernhagen.*[59]

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[54] Thomas Matthews, "Classification for Purposes of Licensing," *University of Illinois Law Forum* (Spring, no. 1, 1957), p. 22.
[55] 415 Ill. 246.
[56] *Chicago Cosmetic Co. v. City of Chicago,* 374 Ill. 384.
[57] *People v. Ericsson,* 268 Ill. 368.
[58] *People v. Callicott,* 322 Ill. 390.
[59] 326 Ill. 100.

The burden of proof, the test of reasonableness, does not lie with the municipal authorities. "A Court will not hold an ordinance void as unreasonable where there is room for a fair difference of opinion on the question, even though the correctness of the legislative judgment may be doubtful and the Court may regard the ordinance as not the best which might be adopted for the purpose."[60]

Although the courts take a broad view of power in pursuance of public health, safety, and so forth, some basic standards for acceptable classification have been established while others have consistently been invalidated as unreasonable. Fees assessed on seating capacity as, for example, in restaurants[61] and barber shops[62] (on the number of barber's chairs) have been upheld. Similarly, graded license fees based on the highest charge for theater seats,[63] and distinction in fees charged between wholesale and retail dealers[64] and between vending machine sales versus over-the-counter sales[65] have all been upheld.

The classification of commercial motor vehicles, sustained as reasonable by the courts, originates from the fundamental classification distinction between motor and horsedrawn vehicles.[66] A Paris ordinance distinguishes as many as fifteen classes of vehicles for which differing fees are assessed.[67] Further, fees adjusted according to the size and number of vans operated by a furniture mover have also been upheld.[68]

Distinctions in municipal licensing ordinances based on resident and nonresident status,[69] except for liquor dealers, have been overruled by the courts, as have local residence exemptions,[70] that is, establishing different license requirements and/or fees for similar businesses based upon the area of the city within which business is conducted.

The courts have inconsistently ruled on the validity of a fee classification based upon the number of employees at work for a firm. In *Chicago Cosmetic Co. v. City of Chicago*[71] the court upheld an ordinance which set a rate proportional to the number of employees. However, in this case, the

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[60] *Klever Shampay Karpet Kleaners Inc. v. City of Chicago,* 323 Ill. 368. See also, *Hartman v. City of Chicago* 282 Ill. 56; *Village of Bourbonnais v. Herbert,* 86 Ill. App. 2d. 367.

[61] *City of Chicago v. R. and X. Restaurant, Supra* note 12.

[62] *Aliotta v. City of Chicago,* 389 Ill. 418.

[63] *Metropolis Theater Co. v. City of Chicago,* 246 Ill. 20.

[64] *Beskin v. City of Chicago,* 341 Ill. 489, and *Charles v. City of Chicago,* 413 Ill. 428.

[65] *Illinois Cigarette Service Co. v. City of Chicago,* 89 Ill. 610.

[66] *Westfalls Storage v. City of Chicago,* 280 Ill. 318.

[67] *Melton v. City of Paris,* 333 Ill. 190.

[68] *McGrath v. City of Chicago,* 309 Ill. 515.

[69] *City of Carrollton v. Bazette, Supra* note 35.

[70] *City of Elgin v. Winchester,* 330 Ill. 214.

[71] *Supra* note 56.

plaintiff did not try to prove the lack of a relationship between the amount of the graduated license fee and the cost of regulation. Since the burden of proof rests with the plaintiff in this case and evidence on this point was not introduced, the court was not obliged to take up the question.

Usually, however, a classification of similar businesses based on number of employees will not be tolerated by the courts.

> No reasonable relation between the investigation concerning the validity of an applicant for a license . . . and the fees prescribed by the twelve classifications can be established. . . . The expense involved in performing the city collector's duty cannot justify license fees ranging from $2 to $200, depending upon the number of the applicant's employees. It is apparent that the license fees were imposed for the purpose of raising revenue."[72]

This case illustrates another consideration: the relationship between fees assessed against the cost of regulatory administration. It has already been established that fees cannot be confiscatory or prohibitive, but what is a "reasonable" fee? Statute has conferred upon municipal authorities specific powers to tax as well as regulate certain occupations. There are many ordinances which charge a so-called occupation tax, a fee paid by the applicant for a permit without additional conditions.

However, an ordinance imposing an occupation tax is void if there is no statutory power to tax as well as regulate. Taxation cannot be implied from the sole power to regulate or license an occupation.[73] But the omission of the words "to tax" in a grant of power to regulate or license does not mean that a license fee may not be charged to cover the costs of administration.[74] In *American Baking Co. v. Village of Wilmington*[75] it was added that

> the charge for the licenses must bear some reasonable relation to the additional burdens imposed by police supervision, but the fact that the license may possibly exceed the expense involved does not necessarily render the fee illegal or unreasonable.

Nor is an ordinance invalidated if the city fails to enforce its regulation.[76] It is an irrelevance, ruled the court, if the inspection for which the fee is charged is never made. And in *Walker v. City of Springfield*[77] the court held that a percentage of gross receipts instead of a gross sum paid for the privilege to conduct a business does not render such a percentage a tax instead of a license fee, notwithstanding the fact that no license need be issued.

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[72] *Nature's Rival Co. v. City of Chicago,* 324 Ill. 566.
[73] *Aberdeen-Franklin Coal Co. v. City of Chicago,* 315 Ill. 99.
[74] *Sager v. City of Silvis, Supra* note 11.
[75] 370 Ill. 400.
[76] *People v. Village of Oak Park,* 266 Ill. 365.
[77] 94 Ill. 364.

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The court has been inconsistent in its rulings on the matter of the joint powers of taxation and regulation. In *Lamere v. City of Chicago,*[78] a case in which the court subsequently overruled itself, it was held that an ordinance was valid as a taxing measure if no conditions were attached for the purpose of regulation (selective implementation of powers conferred). However, if qualifications were designated for the purpose of regulation, then the fee must be "reasonably" calculated to cover the cost of administration and enforcing such regulation. In its decision *Stiska v. City of Chicago*[79] the court offset the either/or proposition of the earlier decision by ruling that if the power to tax is granted, the amount, which cannot be prohibitive, need not be based on the expense of regulation involved, thus reaffirming the well established rule that an ordinance may be based on not merely one, but several statutory provisions.[80]

Max Lipkin points out that the combined powers of taxation and regulation have been so entangled in practice that the confusion is even reflected in the discussions of the court.[81] In *Wiggins Ferry Co. v. City of East St. Louis,*[82] the court held an ordinance valid which imposed a license of $50 for each boat operated by the ferry company; it ruled that the license fee imposed was not a tax. The court said in subsequent discussion that the legislature had not intended to deprive cities of that source of revenue!

Whether a fee is calculated on the cost of regulation or as a license tax, it is the standard of reasonableness which prevails. This is unsatisfactory not only because "reasonableness" is a vague standard, but because it casts the judiciary in a legislative role. "The power of the city council to pass ordinances must be reasonably exercised, and the reasonableness of the ordinance is a question for the decision of the court. . . ."[83] Unavoidably, the "test of reasonableness depends upon criteria which are subjective; consequently, there is little precision in the test's gauging of a city's governmental acts."[84]

Concurrent Jurisdiction

If the power to license a particular subject has been conferred by the state, the fact that the state also regulates that subject does not prevent additional regulation by ordinance. "There is nothing inherently obnoxious in the requirement that a person engaged in a business shall have two licenses, one from the State and the other from the city . . . provided there is no incon-

[78] 391 Ill. 552.
[79] 405 Ill. 314.
[80] Matthews, *Supra* note 54.
[81] "Licensing for Revenue," *University of Illinois Law Forum* (Spring, no. 1, 1957), p. 87.
[82] 102 Ill. 560.
[83] *City of Belleville v. Mitchell,* 273 Ill. 136.
[84] Parsons, *Supra* note 5, p. 33.

sistency or repugnancy between the two."[85] A difference of penalty will not affect the validity of the ordinance.[86]

In fact, several statutes clearly intend such a double practice to exist. For example, "provisions of this Act [state licensing of itinerant merchants] shall *not* be construed to affect or repeal any authority heretofore or hereafter granted to cities, villages or incorporated towns to license, tax or regulate any itinerant merchant by motor vehicle."[87]

However, a "saving clause" does not, in itself, confer any power not otherwise granted by statute. A statute regulating currency exchanges provides that "nothing contained in this Act shall be construed so as to limit the power of municipalities, to license and tax community currency exchanges. . . ."[88] In the case of *Arnold v. City of Chicago*[89] the city had passed an ordinance licensing armored trucks, a matter not handled by statute. The court found that no such power existed previously (currency exchanges were not in existence when the predecessor of the present statute, section 11-42-1 regulating "money-changers," was enacted), and the court stated that a statute is to be construed as it was understood at the time of its passage, and the clause conferred none.[90]

Similarly, in *Chicago Real Estate Board v. City of Chicago*[91] the court invalidated anti-discrimination ordinances in housing because the city's power to regulate does not extend to civil rights on the basis that this matter was not contemplated at the time the power to regulate was conferred in 1871.

Delegation of Authority

Corporate authorities cannot delegate discretionary powers granted to them by statute although they may authorize others to carry out the provisions set down in the ordinance. The courts will not affirm grants of unspecified authority. In *City of Rockford v. Hey*[92] the court held that an ordinance which stated that the local commissioner of health must be satisfied with the manner by which an ice cream factory obtained its state license was an improper delegation of authority.

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[85] *City of Chicago v. Michalowski,* 318 Ill. App. 533.
[86] *City of Decatur v. Schlick,* 269 Ill. 181.
[87] *Illinois Revised Statutes,* 1969, Ch. 121½, sec. 165-7; see Kneier, pp. 8-9.
[88] *Illinois Revised Statutes,* 1969, Ch. 16½, sec. 56.
[89] 387 Ill. 352.
[90] Strict construction of legislative intent, see p. 6. Note: in *Edward R. Bacon Grain Co. v. City of Chicago,* 325 Ill. App. 245, the U.S. Supreme Court has similarly ruled that "the federal control of interstate commerce does not preclude local police regulations covering matters as to which Congress has not acted." If there is no conflict between federal and local regulations, it is no burden on interstate commerce. See Kneier, *Supra* note 49.
[91] 244 N.E. 2d. 793.
[92] 366 Ill. 526.

Other areas of delegated authority invalidated by the courts include setting the amount of fees[93] and determining precisely which articles are considered injurious to public health.[94]

On the other hand, the power to revoke licenses can be delegated although the standards for violation may in fact be vague.[95] The courts have ruled that an ordinance cannot be devised to foresee all possible grounds for revocation.[96]

Revocation of Licenses

The authority to grant licenses necessarily implies the authority to revoke them, but with few exceptions such procedures are not mentioned, much less enunciated, in the statutes.[97] Section 11-60-1 of the Cities and Villages Act outlines the broad grant of power to revoke licenses.

Although the violation of municipal ordinances is a quasi-criminal offense punishable by fines and imprisonment, the most effective and widely used method of enforcement is the power of revocation and, to a more limited extent, the power of suspension.[98]

Licenses are revoked in accordance with the procedures set out in the ordinances. The crucial question is whether the procedures must include notification and a hearing before revocation. The issue here is the constitutional right of "due process of law." The court discussed this fundamental point in *Father Basil's Lodge v. City of Chicago.*

> Section 2 of Article II of the constitution of this State and the fourteenth amendment of the Federal constitution provide that no person shall be deprived of life, liberty or property without due process of law. "Property" has been defined to include every interest anyone may have in any and everything that is the subject of ownership by man, together with the right to freely possess, use, enjoy or dispose of guaranteed by the constitutions, cannot be wholly taken away or limited by the State except insofar as it may become necessary for the individual right to yield to the higher and greater law of the best interests of the people. . . . The privilege of every citizen to use his property according to his own will is both a liberty and a property right. The "liberty" guaranteed by the constitution includes not only freedom from servitude or restraint, but also the right of every man to be free in the use of his power and faculties, to pursue such occupation or business as he may choose, and to use his property in his own way and for his own purposes, subject only to the restraint necessary to secure the common welfare.[99]

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[93] *Naegle v. City of Centralia,* 181 Ill. 151.
[94] *City of Cairo v. Coleman,* 53 Ill. App. 680.
[95] *Wiggins v. City of Chicago,* 68 Ill. 372.
[96] "Occupational Licensing in Illinois," *University of Illinois Law Forum* (no. 9, June 1942), p. 699.
[97] The exceptions are sec. 11-36-6, mason contractors; sec. 11-35-1, plumbers; and sec. 11-34-1, steam boiler operators.
[98] John Mortimer and Patrick Dunne, "Grant and Revocation of Licenses," *University of Illinois Law Forum* (Spring, no. 1, 1957), p. 41.
[99] 393 Ill. 246.

Nevertheless, the courts have retained a distinction between the right to engage in a particular business and the privilege of doing so, the former necessitating a formal hearing and the latter, not.[100] The basis of this distinction, albeit tenuous, is one between occupations which are not per se a public nuisance or do not affect the public health, safety, and morals, and those occupations which are deemed injurious to the public welfare.

> Those trades which are not in themselves detrimental to the public, or which contribute to the community and do not easily jeopardize the public health, safety, and morals, are afforded the protection of due process. Those which in themselves may be prohibited, or which do not contribute to the common good and which easily afford an opportunity to injure the public welfare, do not require notice and hearing before revocation of a license to engage in such a trade.[101]

Due process of law does not necessarily imply judicial action.[102] Administrative proceedings held according to established rules do not violate constitutional rights.[103] The hearing has been generally accepted as a reasonable procedure of administrative justice. However, in many licensing ordinances, wide discretion has been delegated to the administering authorities, and "procedures" for revocation do not include either notice or a hearing.

A federal circuit court of appeals held the action of a mayor valid and not arbitrary when he revoked a theater license on the grounds that he felt the production, which he had seen the previous night, to be in violation of certain ordinances prohibiting obscene and indecent plays. The court ruled,

> This legal question is whether there was sufficient evidence before the administrative officer to justify a finding of violation. In other words, the judiciary is not permitted to substitute its judgment upon disputed facts for that of the administrative officer. It may inquire only whether those facts include substantial evidence sufficient to justify a finding of violation.[104]

Hence, administrative determination of fact will be upheld by the courts unless it is unsupported by sufficient evidence or is arbitrary. The court ruled, "We do not intend to use the court as a final arbiter in every dispute upon conflicting issues of fact, unless findings which have been made by properly constituted administrative agencies are against the manifest weight of the evidence presented."[105] Yet, without the necessity for a hearing prior

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[100] McQuillin claims that there are no such distinctions of this nature "since [licensing] is valid only if based upon an exercise by the municipality of its police or taxing powers, out of which can arise no private rights but only duties, such as the duty to pay taxes or obey police regulations." *Municipal Corporations* (3rd ed.) Section 26.01a.

[101] Mortimer and Dunne, *Supra* note 97, p. 32.

[102] *Reetz v. Michigan,* 188 U.S. 505.

[103] *Wiggins v. City of Chicago,* 68 Ill. 372.

[104] *City of Chicago v. Kirkland,* 79 F. 2d. 963 (7th Cir 1935).

[105] *Outboard, Marine and Mfg. Co. v. Gordon,* 403 Ill. 523.

to the revocation of so-called "privilege" licenses, that "manifest weight of the evidence" will never arise.

As more and more occupations are being subjected to regulation and taxation, the distinction between "privilege" and "right" as applied to procedures for revocation becomes less discernible and may, thereby, be inappropriately attributed to those numerous areas representing neither one nor the other extreme. In any case, license-holders should be free from the abuse of discretion.[106]

Summary

There is no trend, rather a pattern of inconsistency in the decisions of the Illinois courts on the meaning and scope of municipal licensing power. As previously stated, the cases relevant to this area are numerous, indeed unmanageable, because of extensive litigation made necessary by the frequently vague language of the statutes. It can be argued, on the one hand, that the somewhat allusive nature of these grants of power enhances the authority of municipalities. The only escape from the accepted "Dillon Rule" of explicit enumeration and from the precept of exclusion by enumeration is in the fact that statutes may not be specific in their terms of reference. On the other hand, vague terms may produce the opposite effect, for there is no guarantee that courts will loosely interpret the ambiguous terminology.

Actually, the courts have been inconsistent in their rulings on these matters, and it is here, rather than with the legislature, that the real confusion predominates. In their attempts to clarify legislative intent, the courts have more often than not placed restraint upon municipal licensing powers. However, the unpredictable glimmers of broad interpretation in this field, albeit seldom, have been sufficient to spur the confusion and repeated reaffirmation by the courts on almost every point.

There is an inherent weakness in the judicial process which contributes significantly to the breakdown of consistency in court rulings; namely, that the burden of proof rests with the individual, association, or corporation assailing the provisions of an ordinance. It is presumed that the ordinance is valid until proven otherwise. To a degree, therefore, the extent of municipal powers may be directly related to the cleverness and sophistication of the assailant's argument.

Often the cause of inconsistency is simply the courts themselves. On the matter of license fees, the court held in *City of Chicago v. Schall*[107] that the mere probability that license fees exceed the cost of regulation does not render the ordinance invalid. Proof must, therefore, be conclusive. But even when

[106] See Mortimer and Dunne, *Supra* note 97, for a detailed discussion.
[107] 2 Ill. 2d. 90.

TABLE I. NUMBER OF AREAS LICENSED BY ILLINOIS MUNICIPALITIES

City* (Over 10,000)	Areas	City (Under 10,000)	Areas	City (2,500-5,000)	Areas
Rockford	46	Effingham	3	Paxton	3
Decatur	14	Rochelle	18	Anna	6
Quincy	15	Clinton	7	Galena	8
Danville	24	Vandalia	5	Hillsboro	5
Galesburg	4	Litchfield	5	Morrison	8
Urbana	31	O'Fallon	7	Waterloo	4
Pekin	11	Princeton	3	Carthage	1
Lincoln	21	Creve Coeur	6	Coal City	5
Mt. Vernon	14			Rushville	3
Sterling	20			Eureka	1
Mundelein	38				
Centralia	14				
Canton	12				
Winnetka	28				
Taylorville	8				
Bradley	7				

* Cities are listed in order from largest to smallest population.

the plaintiff provides proof of fees grossly exceeding administrative costs, the court has been unwilling to set specific standards. In *Metropolis Theater Co. v. City of Chicago,*[108] an ordinance outlining five classes of theaters based on the price of admission with fees ranging from $200 to $1,000 per year was upheld as not unreasonable or excessive even though the cost of inspecting these premises amounted to only $50 per year.

The standard of the courts for most decisions and critical to their legal discussion is the concept of "reasonableness," an altogether subjective standard. Again, it can be argued that such a vague standard enlarges the potential scope and flexibility of municipal authority. Nevertheless, it remains unclear and, thereby, questionable. The result is a circular situation which has benefited neither the municipalities nor the judicial process.

II. MUNICIPAL LICENSING IN ILLINOIS: PRESENT PRACTICES

Legally, Illinois municipalities may license and regulate subjects enumerated in the statutes and tax only those subjects expressly granted by statute. How extensively do Illinois municipalities license? What fees do they charge? Do they tax by license where permitted? For which businesses is a hearing guaranteed before license revocation? How do Illinois cities compare on these points?

Thirty-four municipalities with a population of at least 2,500 each responded to a questionnaire dealing with these points. This was a return of

[108] 246 Ill. 20.

TABLE II. FACTORS IN LICENSING

City (Over 10,000)	Location	Economic Function	Form of Government	Number of Licensed Subjects
Rockford	C	MR	Mayor/Council	46
Decatur	C	MR	Council/Manager	14
Quincy	I	M	Mayor/Council	15
Danville	I	M	Commission	24
Galesburg	I	MR	Council/Manager	4
Urbana	C	Ed	Mayor/Council	31
Pekin	S	M	Commission	31
Lincoln	I	M	Mayor/Council	21
Mt. Vernon	I	RM	Council/Manager	14
Sterling	I	Mm	Commission	20
Mundelein	S	M	Council/Manager	38
Centralia	I	RM	Mayor/Council	14
Canton	I	M	Mayor/Council	12
Winnetka	S	Rr	Council/Manager	28

KEY

Location: C — central city
S — suburb
I — independent city

* Economic Function:
M — at least 50% manufacturing; retailing over 30%.
Mm — at least 50% manufacturing; retailing under 30%.
MR — less than 50% manufacturing; but manufacturing greater than retailing.
RM — retailing major; manufacturing more than 20%.
Rr — retailing major; manufacturing less than 20%.
Ed — educational institutions major industry.

* Source of economic classification: International City Managers' Association, *The Municipal Yearbook* (1967), pp. 31-33.

approximately 50 percent. Forty municipalities of less than 2,500 population also responded. Generally, the second group licensed few, if any, subjects whatsoever. The common exceptions were liquor, billiard hall, and peddler licenses. Hence, it is essentially on the former group of municipalities that this section of the report will concentrate.

Number of Areas Licensed

Of seventy-eight possible areas for licensing by municipalities in Illinois, only one of the cities represented does, in fact, license more than half these areas. Rockford, the only city of over 100,000 population in this sample, licenses forty-six subjects (see Table I).

While it is obvious that generally speaking the number of licensed areas and a city's population are related, this relationship is not significant within the group of cities over 10,000. Decatur, the second largest city (90,000), licenses only a third as many areas as are licensed by Rockford. Surprisingly, Galesburg, with a population of 37,000, claims to license only four subjects. Neither the classification of cities by economic function nor the individual

forms of government offer an explanation of these license figures (see Table II). However, evidence does indicate a tentative correlation between a city's location and number of licensed subjects. An hypothesis is advanced that cities in metropolitan Chicago license significantly more subjects than do cities of the same population Downstate.

Specific Areas Licensed

Only six of seventy-eight possible areas are licensed by at least a majority of the cities of over 2,500 population. These subjects are predominantly amusements (billiard halls, bowling alleys, coin-operated machines, and motion picture theaters), but also include peddlers and taxicabs. Similarly, billiard halls, coin-operated machines and peddlers are most commonly licensed by municipalities under 2,500 population. See Table III.

Although Illinois municipalities may license most subjects licensable by cities in other states, there are several important areas omitted in the statutes. Among these are mobile homes not in trailer courts, photographers, and building contractors. Nevertheless, a number of cities indicated that they do license these subjects (the omissions and examples of licensing in these specific areas are discussed in Part III).

It is obvious that Illinois municipalities do not begin to exhaust the number of possible licensing areas. For a breakdown of areas licensed by each city over 2,500 which responded to our survey see Table IV.

Comparative Fees

In comparing fees for the six most commonly licensed subjects among the cities listed in Table V, significant variations occur in charges for motion picture, peddler, and taxicab licenses. A small part of the explanation for these fee variations can be found in the population factor — higher fees in larger cities — yet, this is not a truly consistent pattern. Nor can the explanation be found in the intent of the license for which the fee is assessed.

It is logical to assume that a regulatory license would normally be less than a license tax. Five of the six areas outlined in Table V may be taxed by municipalities as well as regulated. Municipal officials were instructed on the questionnaire to indicate "regulation only" beside a licensed subject if that was the intent of their ordinance and "both taxation and regulation" if that was the intent. Only the starred cities in Table V claim, in these specific areas, to license for both taxation and regulation. Yet, the assumed pattern with respect to the amount of the fees does not emerge. Taxing municipalities do not, with consistency, charge higher fees for licenses than do the others. In fact, so-called regulatory fees often grossly exceed the fees classed as taxes.

Similarly, license fees do not vary proportionately among cities in states which authorize licensing for revenue and cities in states which do not (see Table VI). In Arizona, Colorado, and Oregon, municipalities may exten-

TABLE III. SUBJECTS LICENSED BY SEVENTY-FOUR ILLINOIS MUNICIPALITIES

Licensed Area	Over 2,500 pop.	Under 2,500 pop.
Amusements		
Athletic contests	3	1
Billiard halls	19	14
Bowling alleys	20	4
Circuses*	8	
Coin-operated machines	24	7
Motion pictures	21	1
Public dances	11	1
Shooting galleries	3	
Skating rinks	8	
Theatricals	5	
Food		
Bakeries	5	
Coffee houses	5	
Food manufacturers	1	
Food delivery vehicles	9	1
Fruit stores	2	
Grocery stores	4	1
Ice cream parlors	5	
Meat dealers	3	
Milk dealers	8	2
Restaurants	8	2
Refrigerated lockers	2	
Others		
Air conditioner installations	4	
Auctioneers	11	
Auto courts	2	
Barber shops	3	
Bathing beaches	1	
Chicken hatcheries		
Coal dealers		
Detective agencies	3	
Dry cleaners	4	
Electrical contractors	13	1
Elevator operators	1	
Draymen		
Fertilizer plants		
Florists	1	
Filling stations	4	1
Fire extinguisher service	1	
Others (continued)		
Food lockers	2	
Foreign insurance companies (fire)	7	1
Grain elevators		
Handbills	3	
Hospitals		
Horse racing		
Hotels	2	
House movers	7	
Ice dealers	1	
Insurance brokers	1	
Itinerant merchants	10	3
Junk dealers	14	1
Kennels	2	
Laundries	5	
Livery stables		
Lumber dealers	2	
Machine shops	1	
Mason contractors	4	
Nursing homes	3	
Outdoor advertisers	7	
Oil dealers	4	
Pawnbrokers	7	
Parking lots	3	
Peddlers	21	
Plumbers	7	
Public garages	3	
Quarries		
Rooming houses	2	
Real estate brokers	6	
Sanitariums	1	
Scavengers	11	3
Second-hand stores	3	
Slaughter houses		1
Soap factories		
Steam boiler operators		
Tobacco dealers	6	1
Taxicabs	25	1
Undertakers	1	
Weights/measures	1	
Trailer courts	11	1

* Several cities prohibit circuses.

TABLE IV. LICENSING BY CITY

	Eureka	Rushville	Coal City	Carthage	Waterloo	Morrison	Hillsboro	Galena	Anna	Paxton	Creve Coeur	Princeton	O'Fallon	Litchfield	Vandalia	Clinton	Rochelle	Effingham	Bradley	Taylorville	Winnetka	Canton	Centralia	Mundelein	Sterling	Mt. Vernon	Lincoln	Pekin	Urbana	Galesburg	Danville	Quincy	Decatur	Rockford
Athletic contests																x							x						x					
Billiard halls		x	x			x	x		x								x		x	x	x	x	x	x	x	x		x	x		x		x	x
Bowling alleys		x	x				x	x	x		x		x	x			x				x			x	x	x	x	x	x		x	x	x	x
Circuses						x		x								x					x		x		x						x	x		
Coin-operated games																				x		x	x	x	x	x	x	x	x		x	x	x	x
or musical devices		x		x	x		x	x	x		x		x	x	x	x			x		x	x	x	x	x	x	x	x	x		x	x	x	x
Motion pictures	x				x	x	x							x	x		x	x		x	x	x		x	x	x	x	x	x		x	x	x	x
Public dances					x	x											x				x			x	x	x						x			
Shooting galleries																	x												x		x			
Skating rinks																	x		x				x		x		x		x		x			x
Theatricals																				x		x	x						x		x			
Bakeries													x								x			x			x							x
Coffee houses																					x			x										
Food manufacturers																					x								x					x
Food delivery vehicles		x		x									x	x							x		x		x		x							x
Fruit stores																					x													
Grocery stores																					x		x											x
Ice cream parlors								x													x													x
Meat dealers																					x													x
Milk dealers											x										x		x	x			x		x		x			x
Restaurants																					x		x	x			x		x	x			x	x

| | | |

TABLE IV. (Continued)

	Eureka	Rushville	Coal City	Carthage	Waterloo	Morrison	Hillsboro	Galena	Anna	Paxton	Creve Coeur	Princeton	O'Fallon	Litchfield	Vandalia	Clinton	Rochelle	Effingham	Bradley	Taylorville	Winnetka	Canton	Centralia	Mundelein	Sterling	Mt. Vernon	Lincoln	Pekin	Urbana	Galesburg	Danville	Quincy	Decatur	Rockford
Ice dealers																																		x
Insurance Brokers																																		x
Itinerant merchants						x				x							x						x		x	x	x		x		x			x
Junk dealers								x				x				x	x	x			x		x	x	x			x	x			x	x	x	x
Kennels																																x			x
Laundries																					x	x		x					x						
Livery stables																								x					x						
Lumber dealers																								x											
Machine shops																								x											
Mason contractors																	x					x			x								x		
Nursing homes																								x							x				
Outdoor advertisers																	x			x		x		x	x				x						x
Oil dealers																							x	x					x						x
Pawnbrokers						x															x			x				x	x		x				x
Parking lots												x													x										x
Peddlers			x	x		x										x	x	x	x	x	x	x	x	x	x	x	x		x		x	x	x	x	x
Plumbers	x																x					x			x	x				x	x				
Public garages																					x			x											x
Quarries																								x											x
Rooming houses																													x	x			x	x	x
Real estate brokers																					x			x											

Sanitariums																															x
Scavengers	x			x							x			x	x	x			x	x		x			x			x			x
Second-hand stores																x												x			x
Slaughter houses																															
Soap factories																															
Steam boiler operators																															
Tobacco dealers													x	x					x	x					x						x
Tanneries																															
Taxicabs			x			x	x		x	x	x	x	x			x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Trailer camps		x				x			x		x		x				x					x	x		x		x				
Undertakers																				x											
Weights/measures																															x

TABLE V. COMPARATIVE LICENSE FEES

City	Billiard Halls	Bowling Alleys	Coin-Operated Machines	Motion Pictures	Peddlers	Taxicabs
Rockford*	$30/1st table $15/each additional	$25/alley	$15/machine	$125 up	$3/day $45/mo.	$25/cab
Decatur*	$10/1st table	$10/alley	$10/machine	$.50/seat	$2/day	$225/3 cabs $35/each additional
Quincy†	...	$10/alley	$15/machine	$175	$75/yr.	$10/cab
Danville	$10/1st table $5/each additional	$20/1st alley $10/each additional	$75/machine	$100/350 seats	$5/day	$50/cab
Galesburg	...	...	...	...	...	$50/cab
Urbana	$25/table	$15/alley	$12/machine	$100/yr.	$5/day	$15/cab
Pekin	$25/table	$25/alley	$15/machine	$600/yr.	...	$25/cab
Lincoln*	...	...	$15/machine	$50/yr.	$2.50/day	$10/cab
Mt. Vernon†	$25/1st table $15/each additional	$25/alley	$25/machine	$600/yr.	$10/day	$15/cab
Sterling	$50 minimum	$100/yr.	$40/machine‡	$.15/seat	$10/day	Seating capacity
Centralia*	$10/table	...	$20/machine	...	$1/day	$10/cab
Mundelein	$5/table	$10/alley	$10/machine	$50/yr.	$50/yr.	$50/cab
Canton	$15/table	...	$25/machine	$120/yr.	$10	$25/cab

Winnetka	$10/table	$10/alley	...	$200/yr.	$3/day	$5/cab
Taylorville*	$15/table	...	$10/machine	$25/yr.	$3/day	$5/cab
Bradley*	$25/table	...	...	...	$5/day	$25/1st cab $5/each additional
Effingham	...	...	...	$25/yr.	...	...
Rochelle*	$10/1st table $5/each additional	$15/1st alley $25/each additional	...	$60/yr.	$50/yr.	$50 license $5/cab
Clinton	...	...	$20/machine	...	$25/yr.	$25/cab
Vandalia†	...	...	$531/total year	$200/yr.	$5/day	$250/yr.
Litchfield†	...	$20/alley	$15/machine	$150/yr.	...	$75/cab
O'Fallon*	...	$5/alley	$5/machine	...	$10/yr.	$25/cab
Princeton†	...	...	...	...	...	$25/cab
Creve Coeur†	...	$5/alley	...	...	no fee	...

* Indicates a municipality which license taxes.
† Municipality did not indicate whether it licenses for regulation, taxation, or both.
‡ $1,600 operator fee.

TABLE VI. MUNICIPAL LICENSE FEES FOR SELECTED SUBJECTS IN SEVEN STATES

	Auctioneer	Billiard Halls	Motion Picture Theaters	Peddler (Foot)	Taxicabs
Pennsylvania					
Philadelphia	(†)	$35/1st table $15/each additional	$100	15	...
State College	(†)	$5/table	$1/day	$1/day	$75/space
Darby	(†)	$10/table	$100/yr.	$10/yr.	...
Arizona*					
Phoenix	$100	$12/table	$100/over 500 seats	$40/yr.	$20/1st 10 cabs
Tucson	$80	$65/yr.	...	$40/yr.	$80/cab
Scottsdale	$25/auction	$20/table	...	$100/yr.	...
Michigan					
Detroit	$100	$5/1st table $.50/each additional	$50/over 500 seats	$5	$.50/cab
Grand Rapids	$100	$15/table	$75/over 500 seats	$2/day	$35/cab
Lansing	$25	$2/table	$25/yr.	$10	$25/cab
Colorado*					
Denver	$200/yr.	$25 fee $10/table	$100/yr.	$15	...
Boulder	$300/yr.	$20/1st table $5/each additional	...	$3/day	$25/yr.
Greeley	$50/yr.	$25 fee $12.50/each additional	$200/yr.	$15	$10/cab

Minnesota					
Minneapolis	...	$12/1st table $9/each additional	$59/yr.	$17/yr.	$23/cab
St. Paul	...	$45/1st table $12/each additional	$150/over 750 seats	$11/yr.	$45/cab
Duluth	...	$30/1st table $10/each additional	$50/yr.	$60/yr.	$20/1st cab $25/each additional
Oregon*					
Portland	$100	$15/table $5/each additional	$.25/seat	$12/yr.	2% gross
St. Helens	$100	$50/yr.	$50/yr.	...	$20/1st cab $10/each additional
Coos Bay	$75	$10/table	$75/under 750 seats	$10/day	$125 fee $.50/cab
New Jersey					
Newark	$100	$10/2 tables $5/each additional	$365/yr.	$10/yr.	$35/cab
Trenton	$50	$50/1st table $25/each additional	...	$25/yr.	$75 fee
Princeton	$3/day	$10/1st table $7.50/each additional	$100/750 seats	...	$40/cab

* Indicates states which authorize their municipalities to license tax extensively.
† Pennsylvania boroughs may not license auctioneers (Act 708, 1961).
Sources: *Licenses and Permits,* Department of Licenses and Inspections, City of Philadelphia, September 1965.
License and Permit Fees in Pennsylvania Boroughs, Pennsylvania State Association of Boroughs, Harrisburg, Pa., December 1962.
League of Arizona Cities and Towns, *Business License Taxes,* Phoenix, February 1967.
Michigan Municipal League, "Selected License Fees in Michigan Municipalities," Information Bulletin 74, Ann Arbor, December 1964.
Colorado Municipal League, *Selected Non-Property Revenues of Colorado Cities and Towns,* Boulder, August 1969.
League of Minnesota Municipalities and Municipal Reference Bureau, "Municipal License Fees in Minnesota," Minneapolis, July 1967.
Occupation, Business and Amusement License Fees and Taxes in Oregon Cities, Information Bulletin No. 134, Bureau of Municipal Research and Service, University of Oregon, Eugene, March 1963.
License Fees in Selected New Jersey Municipalities, New Jersey State League of Municipalities, Trenton, October 1963.

sively license tax. Pennsylvania represents a unique situation because its boroughs (municipalities) possess enumerated but nevertheless broad taxing authority. Michigan, Minnesota, and New Jersey municipalities possess limited power to license for revenue. In fact, Michigan municipalities are prohibited by statute to license tax. In scanning the sample fees of several cities in each state, it becomes apparent that the purpose of the license does not affect the actual license charge. Nor is the pattern of fees more uniform among cities in states with limited taxing power than is the pattern among municipalities empowered to tax extensively.

Provisions for a Hearing

Several Illinois cities in this sample provide for a hearing prior to revocation of a license in *every* licensed category. These municipalities are Rockford, Danville, Winnetka, Taylorville, and Rochelle. Both Decatur and Mount Vernon offer electrical contractors a hearing at license revocation. Many cities, however, gave no indication of their notice and hearing procedures.

Summary

Most Illinois municipalities do not regulate and/or tax even half the subjects and occupations authorized by statute. Areas most commmonly licensed are amusements, foods management, auctioneers, electrical contractors (consistently at $25 per year), itinerant merchants/peddlers, junk dealers, scavengers, taxicabs, and trailer courts. With the notable exceptions of billiard halls and liquor establishments (taverns and package dealers), smaller communities (under 2,500) seldom license any businesses or occupations.

Most licenses are on a flat rate basis. When applicable, fees assessed on the number of seats, tables, alleys, vehicles, or trailers in a camp site are common although not universally applied by all licensing municipalities.

The great variation among municipalities in amounts of fees charged, whether they are taxes or funds to cover administrative costs, is an important characteristic of the Illinois licensing experience. However, this appears to be a nationwide licensing feature and one not rationally explained in terms of the scope of the municipal licensing power.

III. COMPARATIVE MUNICIPAL LICENSURE PRACTICES (BY STATES)

At present, all states license certain occupations and professions. In Illinois a greater variety of professions and occupations is licensed than in any other state. At least some cities in every state (with the exception of West Virginia) also license businesses, occupations, and amusements in varying degrees. Furthermore, counties in several states license some businesses.

States license primarily for the purpose of regulation, but municipal busi-

ness licensing is used both as a means of regulation and as a source of revenue. The degree to which local governments have relied on license receipts as a source of revenue has varied from time to time and particularly between different areas of the country. Extensive licensing for revenue is presently practiced by cities in approximately thirty southern, southwestern, mountain, and Pacific states.

Extent of Power to License

A general picture of comparative municipal licensing law is difficult to ascertain for numerous reasons, the most important being: (1) use of similar language in dissimilar situations (for example, the meaning of a license tax); (2) judicial interpretation of language and legislative intent; and (3) significant variation of licensure powers and practices within a single state. For example, in Texas and California[109] the licensing powers of general law cities are more restricted than those of home rule cities; and in Maryland and Colorado[110] the largest cities, Baltimore and Denver, are granted powers other cities in these states are denied. In general, the classification of municipalities has greater impact upon the distribution of revenue powers than upon regulatory powers.

Of forty states' positions on municipal licensing,[111] fifteen may be generally classified as authorizing extensive power to license for both regulation and revenue. At the other extreme, seven states, including Illinois, are classifiable as states authorizing limited revenue and only statutory powers to license businesses and occupations.[112]

REGULATORY POWER

REVENUE POWER		Residual	Statutory
	Broad	15	6
	Limited (prohibited)	11	8

[109] In California license taxes may be imposed by a home rule city although such taxes are prohibited under general laws, *West Coast Advertising Co. v. City and County of San Francisco,* 14 Cal. 2d. 516.

[110] Baltimore may license for revenue those subjects and occupations licensed by the state. However, all other Maryland municipalities may not license tax state regulated activities. In Colorado, Denver alone administers a general wage tax, see p. 43.

[111] Forty-three state municipal leagues and/or legislative reference bureaus responded to the request for information on municipal licensing. Of these, forty provided material sufficient for this writer to make these generalizations.

[112] This does not imply that statutory grants of authority are necessarily restrictive in their scope. Illinois municipalities may license and regulate as many if not more subjects than cities in most other states..

TABLE VII. LICENSING AND HOME RULE IN FORTY STATES

License Power For Regulation/Revenue	Constitutional Home Rule	Legislative Home Rule	No Home Rule	TOTALS
Residual/Broad	8	3	4	15
Residual/Limited	9			9
Residual/Prohibited	2			2
Statutory/Broad	4		2	6
Statutory/Limited		1	6	7
Statutory/Prohibited			1	1
TOTALS	23	4	13	40

Eleven of the fifteen states in which municipalities may extensively license are home rule states (either constitutional or legislative). All eight in the most restrictive classifications are states without local, home rule provisions (see Table VII).

The legal endowment to municipalities of power to license is either explicit, implicit in a grant to manage local affairs, or a combination in which the regulatory power is implicit and license taxes are specifically authorized by the constitution and/or by statute.

In the first two cases, the power both to regulate as a police measure and to raise revenue as a tax measure may be jointly authorized. An example of an explicit joint authorization of power to license appears in Idaho legislation.

> Cities shall have authority to levy and collect a license tax on any occupation or business within the limits of the city and to regulate the same by ordinance. . . .[113]

Similarly, enabling legislation grants to Alabama municipalities a joint authorization:

> The power to license conferred by this article [Alabama Constitution, 1901, sec. 221] may be used in the exercise of the police power as well as for the purpose of raising revenue, one or both.[114]

In several home rule states, such a joint authorization of power is inferred from the broad grant to make and enforce local governmental laws. For example, the California Constitution provides that

> Cities and towns hereafter organizing under charters framed and adopted by authority of this constitution are hereby empowered . . . to make and enforce all laws and regulations in respect to municipal affairs. . . .[115]

California courts have subsequently ruled that chartered cities have the authority to license for regulation and revenue.

[113] *Idaho Municipal Code*, Ch. 3, sec. 50-307.
[114] *Alabama Municipal Code*, Art. 3, sec. 733.
[115] Constitution of the State of California, Art. XI, sec. 6.

TABLE VIII. LICENSING POWER BY STATE

	Constitutional Home Rule	Self-Executing	Regulation Statutory	Regulation Residual	Revenue Limited	Revenue Broad
Alaska	1959	yes		x	x	
Alabama				x		x
Arizona	1912	yes		x		x
Arkansas				x		x
California	1879	yes		x		x
Colorado	1902	yes		x		x
Connecticut	Legislative		x		x	
Delaware			x		x	
Florida[1]	Legislative		x	x	x	x
Georgia	1965			x	x	
Hawaii[2]	1959	yes		x	x	
Idaho				x		x
Illinois			x		x	
Indiana			x		x	
Iowa	1968			x[3]	x	
Kansas	1960	yes		x		x
Kentucky				x		x
Louisiana	1947	partly		x	x	
Maine*						
Maryland	1954	yes		x	x	
Massachuetts			x		x	
Michigan	1908	no		x	x	
Minnesota	1898	no	x	x[4]		
Mississippi*	Legislative					
Missouri*	1875	yes				
Montana			x		x	
Nebraska*	1912	yes				
Nevada	1924	yes		x		x
New Hampshire			x	x[5]		
New Jersey			x		x	
New Mexico	1949	yes		x		x
New York*	1923	no				
North Carolina	Legislative			x		x
North Dakota	1969	no		x	x	
Ohio	1912	yes		x	x	
Oklahoma	1907	yes		x	x	
Oregon	1906	yes		x		x
Pennsylvania	1922	no	x			x[6]
Rhode Island			x			
South Carolina	Legislative			x		x
South Dakota	1962	yes	x			x

* Insufficient or no information.
[1] Special charter cities have residual powers and broad revenue powers; general law cities do not.
[2] Powers here referred apply to counties.
[3] In transition from restricted basis as per 1968 home rule amendment.
[4] The result of liberal construction by the courts.
[5] Special charter cities.
[6] But enumerated.

TABLE VIII. *(Continued)*

	Constitutional Home Rule	Self-Executing	Regulation Statutory	Regulation Residual	Revenue Limited	Revenue Broad
Tennessee	1953	yes	x			x[7]
Texas	1909	no		x	x	
Utah	1932	partly	x			x
Vermont*						
Virginia			x[8]			x
Washington	1889	no		x		x
West Virginia	1936	no[9]				
Wisconsin	1924	no		x		x
Wyoming			x			x

* Insufficient or no information.
[7] Up to state levy.
[8] Municipalities may not license for regulation.
[9] No municipal licensing.

No doubt is entertained upon the proposition that the levy of taxes by a municipality for revenue purposes, including license taxes, is strictly a municipal affair. . . . As such a municipal affair it must be deemed to have been included within the special grant and privilege tendered by the constitutional amendment in 1914 and later accepted by the city.[116]

Furthermore, Oregon courts have interpreted the general charter power to "enact ordinances, by-laws, for the health and general welfare of the city and its inhabitants . . ." to include the power to levy occupational taxes as well as the power to license business and occupations for purposes of regulation.[117] The power to license and regulate implies the power to license for revenue — a liberal interpretation of such an authorization.[118]

It does not necessarily follow that a joint authorization, whether constitutional or statutory, must be so treated in municipal law. However, licensing ordinances in many states do combine the two distinctly separate licensing activities. Frequently, municipal ordinances requiring licenses as a condition for engaging in certain businesses were initially enacted under the police power for regulation in the interest of the public welfare. As licensing for revenue became more general, revenue provisions were often simply incorporated in existing regulatory ordinances.

In the South, the reverse is common: regulations are attached to ordinances initially requiring licenses as tax measures. Nevertheless, the result is the same. Such practices have unduly complicated and obscured the licensing law in these states, as is reflected in the court decisions. For example, Kansas courts have held that it is not the words used but the effect that matters.

[116] *Supra* note 109.
[117] *Phillips v. City of Bend*, 192 Or. 143.
[118] *Abraham v. City of Roseburg*, 55 Or. 359.

If an ordinance uses the phrase "license tax" and there are no regulations and it is clear the charge is for revenue, the ordinance is considered as levying a tax — an occupation tax for revenue. If the ordinance calls the charge an occupation tax, but also has regulations and it is clear the charge is for regulation rather than revenue, the ordinance is held to impose a license fee.[119]

Connecticut courts require the distinction to be greater and to the "effects" of the ordinance add consideration of the actual fee charged irrespective of the presence or absence of regulatory conditions.

In determining whether a city ordinance exacting license fees . . . is a true regulatory measure, or merely a revenue measure masquerading in such guise, regard must be had . . . to its essence as well as to its form. . . . [An ordinance], though enacted as a regulatory measure, [is] held invalid . . . as in fact an attempt to produce revenue, . . . the payments imposed being out of proportion to any lawful purpose.[120]

The third general means of authorizing licensing power avoids these complications. The distinction is maintained essentially because the initial authorizations are themselves distinct (this is the normal pattern in states with municipalities granted only enumerated powers). In such cases, the more common practice is for regulatory powers to be conferred in a general grant (implicit or explicit) and taxing powers withheld pending legislative enactment (the statutes may subsequently enumerate the scope of license taxation or authorize an essentially unlimited tax power).[121] The 1968 municipal home rule amendment to Article III of the Iowa Constitution states that

municipal corporations are granted home rule power and authority not inconsistent with the laws of the general assembly, to determine their local affairs and government, *except* that they shall not have power to levy any tax unless authorized by the general assembly.

Similarly, in another form, the Washington Constitution explicitly grants "any county, city, town or township [to] make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."[122] The power to license for revenue is a distinct statutory grant.

Extraterritorial Jurisdiction

Most states restrict municipal licensing to within the corporate boundaries. Ironically, these restrictions are greater upon home rule municipalities than

[119] League of Kansas Municipalities, *Occupation Taxes* (Topeka, n.d.).
[120] *City of New London v. Howe,* 94 Conn. 269.
[121] In Kentucky, California, and South Carolina, the power to license for revenue is constitutional, but in each case such provisions do not themselves grant any taxing powers to cities but only authorize the legislature to delegate the power by general law.
[122] Constitution of the State of Washington, Art. XI, sec. 11.

upon legislatively-empowered municipalities. Extraterritorial jurisdiction usually ranges from one to five miles.

Indiana statutes provide the means for cooperation and/or accommodation in matters of overlapping municipal jurisdiction. The procedure for judicial determination is noteworthy:

> Whenever . . . jurisdiction is given to a city beyond the corporate limits, such jurisdiction shall not extend to any point within the corporate limits of another municipal corporation, except by agreement of both corporations, by ordinance duly passed by each . . . provided, that if the corporate authorities of such municipalities cannot mutually agree as to the terms of such ordinance and their united action thereunder, either of such municipal corporations may, by petition, present the matter to the circuit court of the county in which such petitioning municipality is located. . . .[122]

The problem of regulating businesses outside the municipal boundaries in the protection of the public health and welfare is uniquely handled in Alabama by so-called "police jurisdictions." Such areas are, in one sense, a form of special district within which one function is performed. However, the municipal authorities are themselves responsible for this activity. Statutory limitations upon the powers of municipalities in police jurisdictions require that licenses be for regulation only and not revenue, and that license fees be only one-half those charged for similar businesses within the corporate limits.

In several states, the county government takes up the police function outside incorporated areas (in Hawaii, this function is performed solely by counties since they are the only form of local government in that state).[124] Alaskan boroughs (roughly the equivalent of counties) may exercise city powers, including licensing powers, in the borough area outside cities, but in most cases exercise of such power must be by vote of residents outside the city. In Nevada, the county is authorized to license for revenue as well as regulation, and in Virginia, county licensing is solely for revenue.

Concurrent Jurisdiction

All states license particular professions, businesses, and activities. The degree to which states preempt the licensing field varies considerably. In Florida, Tennessee, and Texas concurrent jurisdiction is mandatory in that Tennessee municipalities (and counties) may levy license fees up to the amount of the state levy, and in both Florida[125] and Texas, the municipal levy must not exceed one-half the state amount.[126] On the other hand, Maryland

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[122] *Municipal Code of the State of Indiana;* "Municipal Corporations, general powers," sec. 48-1407.

[124] There are in addition fifteen special districts on soil conservation.

[125] Special charter cities in Florida are not limited in this manner.

[126] *Florida Statutes,* Ch. 205.02; *Vernon's Texas Civil Statutes,* Title 122A; *Tennessee Code Annotated,* Title 67, Ch. 42, sec. 02.

municipalities may not exact an occupation tax if there is a state license required.[127]

Washington municipalities may concurrently license those subjects not specifically prohibited by statute (e.g., nursing homes). In those states in which there is extensive concurrent jurisdiction, it may generally be said that the only areas for licensing prohibited to local governments are the "professions." However, this holds true only for regulation and not licensing for revenue.[128]

In several states, tri-level licensing is common. Hence, certain businesses may require licenses from the city, the county, and the state. However, in Louisiana a municipal license exempts a business from requiring a parish license (in either case, a state license is mandatory).

Licensing for Revenue

The principal argument in favor of municipal licensing for revenue is that alternatives to property taxation must be found. The Municipal Finance Officers Association has found among qualified municipalities across the nation a growing popularity for this form of non-property taxation. Presently, cities in twenty-five states administer license taxes; cities in nine states exact an income tax; and cities in nineteen states, the local sales tax (See Appendix B for state breakdown). This is particularly so in the southern states. In Alabama, the municipal license has in recent years led all other forms of revenue used to finance municipal operations. And in South Carolina, license revenue is the only source of local income other than police fines in smaller communities. In some places it accounts for as much as 40 percent of all revenue. Even in larger cities where property values are relatively higher, license taxes have a sizable place in the municipal finance picture. Its intensive use has allowed comparatively low property tax rates. In cities of over 5,000 population, the license tax as a revenue source ranks third after utility receipts and property taxes.

In another light, license taxes, by their nature and flexibility, provide revenue from sources generally withheld from municipalities, such as personal income taxation. States which authorize municipalities to license tax individuals (usually at a flat rate or percentage) are Alabama, Colorado, and Kentucky. Denver is an excellent example of pervasive taxation by municipal licensing. A business occupational privilege tax is levied on *every business* and profession in Denver at a rate of $2.00 per month for each *employee* who makes in excess of $250.00 per month. An occupation privilege tax is also

[127] *Maryland Municipal Code,* Art. 56, sec. 12.

[128] A license tax on professions is valid but such tax shall not be assessed upon the individual's income (unless authorized). For example, in Arkansas, no classification shall be based upon earnings or income (*Texarkana v. Taylor,* 185 Ark. 1145).

levied on each individual employed within Denver who makes in excess of $250.00 per month; he is taxed at a flat rate of $2.00 per month by means of payroll withholding by the employer.[129]

A business gross receipts license tax is a form of business income tax and is similarly just removed from the municipal personal income tax. Approximately two hundred cities in twenty-eight states administer a gross receipts business tax.[130] (This is in addition to a widely administered public utility gross receipts tax.) Courts in the states of Arkansas, California, Kansas, and Kentucky have consistently ruled that such taxation is not income taxation. The Revenue and Taxation Code of the State of California states emphatically that

> no city [or] county . . . shall levy or collect or cause to be levied or collected any tax upon the income, or any part thereof, of any person, resident or nonresident. . . . This section shall not be construed so as to prohibit the levy or collection of any otherwise authorized license tax upon a business measured by or according to gross receipts.[131]

Nor is the gross receipts occupation tax considered a true sales tax, also prohibited by states to many U.S. cities. It is argued that the difference between the sales tax and the business license tax (based upon gross receipts) is that the former is paid by the business and passed on to the consumer/customer. The business tax, however, is a tax which rests initially upon the business, not the customer.

The point being made is that license taxation is of such a nature that it provides the lawful substitute for municipalities otherwise restricted in the forms of non-property taxation they may levy.

Licensing for Regulation

Broadly speaking, the areas regulated by at least the larger municipalities in most states are amusements (including bowling alleys and billiard halls),

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[129] Colorado Municipal League, "Selected Non-Property Revenues of Colorado Cities and Towns" (Boulder, 1969), p. 19.

[130] Gross receipts as a measure of ability to pay is most widely used by U.S. cities for license assessments. The other methods of assessment are flat rates and a type of schedule based on the number of employees (the latter is used in Colorado). Flat charges, however, must be relatively low so that they can be afforded by the smallest business. Similarly, rates within a classification can be no higher than the rate that is reasonable for the smallest business in the classification. Furthermore, a flat or fixed amount schedule fails to produce increased city revenues during periods of price increases and business expansion. Lastly, flat rates are regressive in that they place the greatest relative burden on the smallest business in any particular subject area or classification.

The schedule based on the number of employees may appear more progressive, but is, in fact, not necessarily related to production and profits. Measures of the physical size of a business, such as seating capacity or number of rental units, are better.

[131] Sec. 17041.5.

carnivals and shows, sports, coin-operated entertainment devices, food establishments, junk dealers, pawnbrokers, vehicles (taxicabs), peddlers, solicitors, mobile homes, building contractors, and numerous specialized businesses (e.g., dancing schools, kennels, etc.).

In matters of regulation, Illinois municipalities license approximately the same businesses and occupations as municipalities in other states. However, municipal regulation in Illinois can generally be distinguished in three areas. Illinois municipalities are not empowered by statute to license and regulate (1) solicitors, (2) mobile homes not in trailer parks, and (3) building contractors.

1. Solicitors are not specifically enumerated in the statutes for license regulation. Nevertheless, many Illinois municipalities do license the occupation based on the authority to license peddlers and itinerant merchants.[132] These occupations are lumped together at a time when many states observe the necessity to separate the regulation of solicitors and peddlers. A solicitor is engaged in interstate commerce whenever he takes his orders in one state and ships to the customer from another state. These complications do not arise in the regulation of peddlers. (The peddler who sells from the stock of goods which he has with him is never exempt from licensing by reason of any connection with interstate commerce, regardless of where the goods may have originated. The goods acquire a "situs" in the state when he brings them in for sale.) The Michigan Municipal League specifically recommends that cities maintain separate ordinances regulating peddlers and solicitors.

Several states prohibit door-to-door peddling and solicitation altogether. Such ordinances are nick-named "Green River" ordinances after the famed ordinance initiated by Green River, Wyoming, in 1931. For twenty years, the validity of such a prohibition was fought out in state courts with an almost even split of opinion, but the issue was apparently settled when the U.S. Supreme Court decided that such an ordinance was valid.[133]

Cities in Wyoming, Louisiana, Arizona, and California prohibit door-to-door salesmen. In addition, cities in other states, including Illinois, prohibit peddling and solicitation at homes that are posted with "no peddlers" or "no solicitors" signs. A violation by a solicitor of no peddler and no solicitor signs constitutes a trespass (Illinois municipalities were empowered in 1969 to prohibit trespasses).

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[132] The peddler is characterized and defined as a transient seller of goods, wares, and merchandise who goes about the streets or from house to house carrying his wares with him and who is ready to make at least some sales directly from his person, pack, or vehicle. The solicitor (sometimes termed a canvasser) makes sales for future delivery, usually showing samples and taking orders for his wares. ("Regulation of Peddlers, Ordinance Analysis No. 16," Michigan Municipal League, 1958).

[133] *Breard v. City of Alexandria,* La. 341 ULSL 622.

2. In several states, municipalities have ordinances regulating mobile homes and house trailers not located in licensed trailer parks. (The most popular method of controlling trailer parks themselves is through the zoning power.[134]) Cities and villages requiring licenses for mobile homes not located in regular parks have no regulations prohibiting or restricting occupancy of such trailers in the municipality. Most municipal licenses of this type require the consent of adjacent landowners.

3. Illinois municipalities are not empowered to regulate all facets of building construction. Generally, cities with only enumerated power to license and regulate are restricted to licensing only plumbing, electrical, and mason contractors. In Indiana, however, municipalities are empowered to license and regulate all contractors in the building construction industry.

> The common council of every city . . . is hereby authorized to enact an ordinance or ordinances to regulate, examine and license building contractors, electrical contractors and plumbing contractors and the building construction industry. The terms "building contractor," "electrical contractor," and "plumbing contractor," as used in this act, shall be construed to mean any principal, connected with any designated branch of the building construction industry taking contracts to furnish labor . . . provided, that nothing in this act shall be construed to apply to private home-building by private individuals.[135]

And in Hawaii, municipalities

> may regulate, as to location, methods, and materials of construction and otherwise, the erection, moving, repairing, placing, and maintenance of buildings and other structures, whether within or without the fire limits, so far as may be necessary or proper for the protection and safeguarding of life, health and property.[136]

Although Illinois municipalities are not empowered to license building contractors, a significant number nevertheless do. This, of course, exceeds their authority since Illinois municipalities have no inherent power. The practice persists essentially because it is not challenged in the courts. An example of an unauthorized, local ordinance licensing building contractors presently enforced in Illinois is:

> SECTION 1. It shall be unlawful to engage in business in the municipality as a building contractor without first having obtained a license therefor as hereafter provided.

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[134] License regulations designating the areas in which a certain business may be located is a form of zoning. In some cases (see Appendix A), Illinois municipalities may "license and locate" a business; however, this power is strictly construed by the courts (p. 17).

In Indiana, the power "to license and locate" is liberally construed by the courts. It is not their prerogative to question such determination by the city authorities.

Minnesota courts have held that the power to locate may be implied from the power "to regulate" (Wilson, 33 Minn. 145).

[135] *Indiana Municipal Code*, sec. 48-1408.

[136] *Hawaii Statutes*, Part IV, sec. 70-71.

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The term "building contractor" shall mean and include anyone engaged in the business of cement or concrete contracting, either flat, form or wall work; or as a masonry contractor; or as a carpenter contractor; or as a general building contractor; and any person engaged in the construction, alteration or repair of buildings or other structures, or sidewalk or street pavements.

SECTION 2. The annual fee for such license shall be $25.00. . . .

SECTION 6. UNLICENSED CONTRACTORS — REFUSAL OF BUILDING PERMIT. It shall be the duty of any person when applying to the City Building Inspector for a permit to list on the application form, the names and addresses of all general contractors and subcontractors. The Building Inspector shall refuse to issue the permit until he has duly ascertained that all of the listed contractors have fulfilled the requirements of this ordinance.

A distinction between the law and practice in Illinois must be maintained. This distinction would also apply to any comprehensive, comparative analysis although this survey admits to emphasizing only the licensing law in the various states and not specific municipal practice or malpractice within its framework.

Summary

The municipal power to license may be authorized in a variety of forms. Commonly, a statutory authorization to license is explicit, whereas a constitutional authorization will be implied from home rule language. The constitutional and/or legislative limitation upon the power to license for revenue is common to both home rule and non-home rule states. On the other hand, few non-home rule states empower their municipalities to license tax extensively.

Probably the most important observation is the lack of a significant relationship between municipal licensing practices among the states and relevant economic, social and/or historic characteristics of these states. For each "industrialized" state which restricts the licensing power, there is one which does not; for each state operating under a nineteenth century constitution which limits municipal power to license, there is one which does not.

There are few businesses and occupations which are not commonly licensed for regulation by major cities across the nation. The power to tax by license is not as common among cities, and although southern states are often models of extensive license taxation, they may no longer be distinguished on this basis. Eighteen of the twenty-five states which extensively license tax today are not southern states.

IV. OBSERVATIONS AND RECOMMENDATIONS

Observations

Recommendations for alternate forms of licensing by Illinois municipalities must reflect four summary observations. First, the list of subjects enumerated

by statute is an extensive and awkward one. It is so extensive that most municipalities do not even begin to exhaust their licensing opportunities. It is so awkward that an unnecessary number of legal questions arise. For example, section 11-42-5 of the Cities and Villages Act states that municipalities may license, tax and regulate "all places of eating and *amusement,*" and may license, tax, regulate and prohibit "theatricals and other exhibitions, shows and *amusements.*" How can a place of amusement which in the first case may not be prohibited be distinguished clearly from amusements which in the second case may be prohibited? Under which category do circuses fall? Many Illinois cities forbid circuses within their corporate limits. They base this power to prohibit an amusement presumably upon the wording of the latter portion of the section. Cannot a valid argument be made to reclassify a circus as a "place of amusement?" Into the hands of the courts have fallen these rather tedious, and often unnecessary, licensing problems.

A second observation must concern the courts themselves. They have been notoriously inconsistent in ruling on municipal licensing powers. One problem stems from the statutory authorization to "license, tax, regulate and prohibit." The courts have, at times and in specific cases, been able to see the entire spectrum of power which lies here. Yet, at other times, they have latched onto only one of these aspects of licensing and have, in effect, restricted the legislative mandate. Another problem has arisen over properly determining "legislative intent," and in certain cases, the courts have redefined these intentions despite legislative attempts to amend the confused wording.

Nor have the courts met the standard rule on amounts of license fees. There has been no adequate definition of a "reasonable fee." Consequently, municipalities often exact a license charge which more closely resembles a tax than a fee to cover administrative costs.

A third observation is that, in fact, Illinois municipalities enjoy greater freedom to regulate and tax by license than would appear possible. This is partly the result of conflict in the case law and partly due to the fact that these licensing ordinances are not challenged in the courts.

A fourth general observation is that there is no single licensing pattern toward which most states gravitate. There are examples of every possible licensing formula. The formula for Illinois municipalities must necessarily depend upon circumstances and problems unique to the Illinois experience.

The Options

There are four discernible licensing patterns for municipalities:

1. a general grant of authority which would allow cities to license for regulation and revenue;

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2. a grant to license and regulate but not to tax by license;
3. a grant to license for revenue but not to regulate by license;
4. absence of municipal licensing power (i.e., state licensing only).

State Licensing

This is an unlikely choice. Only West Virginia sets precedent for this form of total state preemption of the licensing function.

It cannot be denied that licensing has attracted organized and politically influential occupational and business groups which have sought to use the licensing system for the furtherance of their own occupational ambitions. But it cannot be shown that the licensing activity is better managed by the state than by local authorities. Local pressures may be one corrupting influence which would be removed by state licensing, but the holders of state licenses might well be less responsive to a city's demands in, for example, building requirements than those contractors whose licenses depend on their active cooperation with the city.

State licensing is the popular choice of several business and manufacturing organizations. A spokesman for the National Automatic Merchandising Association explains that

> many of the businesses we represent will be doing business in a large number of different communities and we find the variation of regulation can be a real problem. Also, widely varying fees create competitive conditions that are not conducive to business expansion and often result in administrative burdens for the businesses involved which are proving expensive to cope with. Of course, this is part of a broader problem created by the constantly increasing fractionalization of government which often proves inefficient and inequitable. Needless to say, as smaller and smaller communities become involved in these issues, their expertise is wanting since they are neither staffed nor have the funds to intelligently carry out regulatory programs.

However, this fear is groundless because Illinois municipalities under 5,000 population license and regulate few, if any, businesses whatsoever.

License for Revenue but Not Regulation

Only in Virginia are municipal licensure powers solely revenue matters. With one exception, the state preempts the police function. The rationale behind this kind of licensing is that, in essence, the police power may be more effectively employed by officials to restrict competition than the tax power. The former is a far more sophisticated and legally evasive device. The fear that regulatory power is abused is often expressed in relation to state regulatory boards.

Nevertheless, regulatory licensing is an accepted function of government and a role believed suited to local management. At a time when municipal

home rule may become a viable option in Illinois, this particular restriction on local power seems circular, if not counterproductive.

License for Regulation but Not for Revenue

A number of states do not permit, even to home rule municipalities, the power to tax by license. Ironically, the rationale is the reverse of the above.

A North Carolina legislative commission claims that such license taxes are inequitable and should be abolished. Presumably, these taxes are administered according to a city's need for revenue, but this is true for any locally initiated tax unless the state legislature mandates a uniform system similar to the sales tax. Furthermore, evidence indicates that inequities resulting from abuses of the power to license tax are not restricted to states in which cities have this power.

In effect, a residual power to license and regulate, but not to tax, would offer little in the way of additional power to Illinois municipalities but would pose a potential threat to the powers they presently exercise. The constitution and/or legislature would be withdrawing from cities the power to license tax in previously accepted areas such as amusements. As a result, specific adjustment of these license charges would probably have to be made.

License for Regulation and Revenue

A large number of states do grant their municipalities this broad licensing authority. It would not be as radical an alternative as would initially appear. In effect, a grant to license for regulation and revenue would no more than legitimize existing practices, although it would broaden Chicago's licensing activities. Yet, such a change would provide the elasticity required to meet the future contingencies of local government.

The contemporary history of Illinois legislation on municipal licensing power is not promising. Several bills of this nature are introduced in every legislative session with little chance of success. In fact, such bills fare more poorly today than they did six to eight years ago. A bill of six years ago which would have empowered cities to license, tax, and regulate any business and occupation carried on for gain within the corporate limits passed the House, but was tabled in the Senate committee. This session House Bill 1808, similar in purpose to the earlier bill, did not even get out of the House committee. The sponsors of this and similar bills are Chicago Democrats. It is unnecessary to explain the logistics of legislative sponsorship, but the lack of broad-based support for these bills will usually spell disaster.

If the proposed 1970 Illinois constitution is ratified by the voters, home rule for Illinois municipalities will encompass licensing of businesses and

occupations for regulatory purposes. However, licensing for revenue is not self-executing and such exercise of power must be authorized by the General Assembly. There is no certainty, of course, that this will be done. The Michigan experience is a case in point. Before 1964, Michigan municipalities could tax by implication, including income and license taxation. It was considered desirable at the Michigan constitutional convention of 1963 to confirm as much as possible the power of municipalities to levy taxes. Therefore, Article II.21 was amended to include this additional sentence: "Each city and village is granted power to levy other taxes for public purposes subject to limitations and prohibitions provided by this Constitution *or by law*." These last three words, which are emphasized, proved fatal. The legislature subsequently adopted Act 243 of the Public Acts of 1964 which prohibits a municipality from imposing any tax other than a property tax. (The legislature did finally adopt a uniform municipal income tax which, it is claimed, has relieved the financial needs of municipalities to some extent.) The proposed Illinois constitution mandates the replacement of municipal revenue lost by abolishment of property taxes. There will be pressure upon the legislature, therefore, to find alternate sources of municipal revenue.

Recommendations

A constitutional and legislative grant of residual power to license for regulation *and* revenue is a reasonable and desirable alternative to the present pattern of municipal licensing in Illinois for the following reasons:

a) Illinois municipalities may now regulate most businesses and occupations; if the legislature feels bound to restrict this authority, it would seem logical to designate the prohibitions rather than enumerate licensable areas in the exhaustive "laundry list" form we now have.

b) *De facto* taxation by cities would be eliminated and consideration of more effective and progressive forms of license tax assessment could be entertained (the Kansas Constitution requires that license taxes be on a graduated rather than a flat rate basis).

c) Such a grant of power would substantially reduce the role of the courts in an area in which they have assumed quasi-legislative power.

The power to prohibit must, nevertheless, remain restricted and such areas must be clearly designated in the statutes. Where the power to prohibit does not exist, municipalities may not produce a similar effect by an exorbitant license tax.

Cities of all sizes in other states have displayed considerable restraint in exercising licensing power, and there is no reason to believe that municipal

officials in Illinois are less responsible in the p rformance of their functions than officials anywhere else.

Suggested Legislation

A bill similar in substance to House Bill 1808 submitted in April 1969 and subsequently tabled by committee.

HOUSE BILL 1808

AN ACT to add Section 11-42-11 to the "Illinois Municipal Code," approved May 29, 1961 as amended

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 11-42-11 is added to the "Illinois Municipal Code," approved May 29, 1961, as amended, the added Section to read as follows:

Sec. 11-42-11, The corporate authorities of each municipality may license and regulate any business or occupation carried on for gain within its corporate limits. The amount of charge for any license or permit which is required in the course of conducting any business or occupation carried on withi. the corporate limits is not restricted to the cost to the municipality of providing such regulation. The municipality may set fees for licensing and regulating businesses which will produce revenues in excess of the cost of administering the regulatory provisions, which revenues shall be deposited into the general corporate fund of said municipality to be used to defray the cost of providing normal municipal services. The powers conferred by this section shall be in addition to all other powers granted by this Chapter and the enumeration in this Chapter of the power to license or regulate specific businesses or occupations shall not be construed to limit in any manner the powers herein granted to license and regulate any other business or occupation.

Comment

1. The authority to license for both regulation and revenue is *explicit* throughout.

2. The bill represents, in reality, a description of present municipal licensing practices.

3. The popular provision "to promote or protect the public health, safety, morals or general welfare" is absent. The power to regulate has been shown to exceed the bounds of public protection and the courts have been unwilling to establish reasonable delimitations of the regulatory function. Hence, such wording in this context is a weak rationalization at best.

4. The powers to regulate and tax are treated in such a manner as to blur unnecessarily the distinction between them. Are all regulated businesses

and occupations suitable targets for taxation as well? This would be the intent of this legislative authorization. Several states have found it desirable to separate the two licensing authorizations in the statutes and to require their separation in local ordinances.

APPENDIX A

ILLINOIS REVISED STATUTES, 1969, CHAPTER 24, CITIES AND VILLAGES ACT: PERTAINING TO THE LICENSING POWER

I. The Express Authority to License (6 divisions)

(1) "To license, tax and regulate"

11-42-6 (23-51) — "hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen and all others pursuing like occupations."

11-42-5 (23-54) — "all places for eating or amusement."

11-54-1 (23-55) — "all athletic contests and exhibitions carried on for gain."

11-42-1 (23-91) — "auctioneers, private detectives, money changers, bankers, brokers, barbers, and the keepers or owners of lumber yards, lumber storehouses, livery stables, public scales, ice cream parlors, coffee houses, florists, detective agencies, and barber shops."

8-11-3, 8-11-4 (23-53) — "cigarette tax and motor vehicle tax," respectively.

(2) "To license, tax, regulate and/or prohibit"

11-42-4 (23-52) — "runners for cabs, busses, railroads, ships, hotels, public houses, and other similar businesses."

11-42-5 (23-54) — "hawkers, peddlers, pawnbrokers, itinerant merchants, transient venders of merchandise, theatricals and other exhibitions, shows and amusements. . . ."

11-42-2 (23-56) — "pin ball, or bowling alleys, billiard, bagatelle, pigeonhole, pool or any other tables or implement kept for a similar purpose in any place of public resort."

(3) "To examine, license and regulate"

11-36-1 to 11-36-6 (22-43 to 22-48) — "every person desiring to engage in the business of a mason contractor or employing mason. . . ."

11-35-1 (22-49) — "journeyman plumbers and master plumbers. . . ."

11-34-1 (23-77) — "persons having charge of . . . steam boilers and elevators."

(4) "To license, tax, locate and regulate"

11-42-3 (23-94) — "all places of business of dealers in junk, rags, and any second-hand article whatsoever."

(5) "To license, regulate and prohibit"

11-44-3 (23-45) — "water craft used about the harbor, or within the jurisdiction."

(6) "To license"

11-80-15 (23-22) — "street advertising by means of billboards, sign boards, and signs. . . ."

II. Express Authorization to Regulate (4 divisions)

(1) "To regulate"

11-80-2 (23-10) — "the use of streets and other municipal property."

11-80-13 (23-20) — "the use of sidewalks, the construction, repair and use of openings in sidewalks and all vaults and structures thereon. . . ."

11-80-18 (23-25) — "the numbering of buildings and lots."

11-80-20 (23-27) — "traffic and sales upon the streets, sidewalks, public places and municipal property."

11-40-1 (23-28) — "the speed of animals, vehicles, cars, and locomotives . . . also vehicles conveying loads within the municipality."

11-20-10 (23-36) — "the construction, repair, and use of cesspools, cisterns, hydrants, pumps, culverts, drains, and sewers, . . . the covering or sealing of wells or cisterns."

11-44-1 (23-43) — "public and private water-landing places, wharves, docks, canals, slips and levees."

11-44-2 (23-44) — "the anchorage and landing of all water craft and their cargoes."

11-44-6 (23-48) — "the use of harbors, towing of vessels, and the opening and passing of bridges."

11-20-2 (23-63) — "the sale of all beverages and food for human consumption. . . ."

11-30-1 (23-69) — "partition fences and party walls."

(2) "To prevent and regulate"

11-80-9 (23-16) — "all amusements and activities having a tendency to annoy or endanger persons or property on the sidewalks, streets and other municipal property."

11-80-10 (23-17) — "the despositing of ashes, offal, dirt, garbage, or any other offensive matter. . . ."

11-80-14 (23-21) — "the use of streets, sidewalks, and public property for signs, signposts, awnings, awning posts, telegraph poles, watering places, racks, posting handbills and advertisements."

11-80-17 (23-24) — "the flying of flags, banners, or signs across streets or from houses."

11-80-16 (23-23) — "the exhibition or carrying of banners, signs, placards, advertisements, or handbills on the sidewalks, streets, or other municipal property."

11-8-2 (23-72) — "detailed enumeration of those areas that may be dangerous in causing or promoting fires."

11-8-4 (23-75) — [an enumeration of items, the storage of which may be a fire hazard].

11-8-5 (23-92) — "the keeping of any lumber or coal yard, or the placing, piling, or selling of any lumber, timber, wood, coal, or other combustible material within the fire limits of the municipality."

(3) "To locate and regulate"

11-42-10 (23-90) — "any grocery, cellar, soap or tallow chandlery, tannery, stable, pigsty, privy, sewer, or other unwholesome or nauseous house or place. . . ."

11-22-1 (23-83) — "hospitals, medical dispensaries, sanitariums and undertaking establishments."

11-20-2 (23-63) — "the manner in which any beverage or food for human consumption is sold. . . ."

11-80-15 (23-22) — "billboards, sign boards, and signs upon vacant property and upon buildings."

11-90-1 (23-29) — "constructing or laying a track of any street railway in any street, alley or public place."

11-42-8 (23-87) — "use and construction of breweries, distilleries, livery, boarding, or sale stables, blacksmith shops, foundries, machine shops, garages, parking lots, camps. . . ."

11-42-7 (23-88) — "use and construction of packing houses, factories for the making of tallow candles, fertilizers, or soap, and tanneries. . . ."

(4) "To provide for/construct, repair/establish and regulate."

11-80-11(23-18) — "crosswalks, curbs, and gutters."

11-20-3 (23-64) — "the inspection of all food for human consumption and tobacco."

11-53-1 (23-65) — "the inspection, weighing and measuring of brick, lumber, firewood, coal, hay, and any article or merchandise of the same kind."

11-108-1 (23-39) — "ferries for hire and toll bridges."

11-109-1 (23-35) — "use of culverts, drains, sewers, and cesspools."

11-107-1 (23-38) — "the use of bridges, viaducts and tunnels."

11-49-1 (23-84) — "cemeteries."

11-20-1 (23-62) — "markets and markethouses."

11-80-12 (23-19) — "mills, mill-races, and feeders on, through, or across the streets and other municipal property."

11-30-5 (23-83.1) — "supervision of every building . . . held out to the public to be a place where sleeping accommodations are furnished or maintained for 20 or more persons. . . ."

III. General Police Authorizations (provide no express licensing authority except in combination with specific grants of authority to regulate/license subjects.)

11-20-5 (23-81) — "The corporate authorities of each municipality may . . . make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases, including the regulation of plumbing and the fixtures. . . ."

11-1-1 (23-105) — "The corporate authorities of each municipality may pass and enforce all necessary police ordinances."

1-2-1 (23-105) — "The corporate authorities of each municipality may pass all ordinances and make all rules and regulations, proper or necessary, to carry into effect the powers granted to municipalities. . . ."

11-60-1 (23-5) — "The corporate authorities of each municipality may fix the amount, terms, and manner of issuing and revoking licenses."

APPENDIX B

POPULAR MUNICIPAL NON-PROPERTY TAXES (BY STATE)

State	License Taxes	Income Taxes	Sales Taxes
Alabama	x		x
Alaska			x
Arizona	x		x
Arkansas	x		
California	x		x
Colorado	x		x
Connecticut	x		
Delaware		x	
Florida	x		
Georgia	x		
Hawaii			
Idaho			
Illinois			x
Indiana			
Iowa	x		
Kansas			
Kentucky	x		
Louisiana	x		x
Maine			
Maryland	x	x	
Massachusetts			
Michigan		x	
Minnesota		x	
Mississippi			
Missouri	x	x	x
Montana			
Nebraska			x
Nevada			x
New Hampshire			
New Jersey			
New Mexico	x	x	
New York	x	x	x
North Carolina	x		x
North Dakota			x
Ohio		x	x
Oklahoma	x		x
Oregon	x		
Pennsylvania	x	x	
Rhode Island			
South Carolina	x		
South Dakota			
Tennessee	x		x
Texas			x
Utah	x		x
Vermont			
Virginia	x		x
Washington	x		